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AS OF OCTOBER 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **46 CFR 500.101** *refers to title 46, part 500, section 101.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	**as of January 1**
Title 17 through Title 27	**as of April 1**
Title 28 through Title 41	**as of July 1**
Title 42 through Title 50	**as of October 1**

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a

date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

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A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

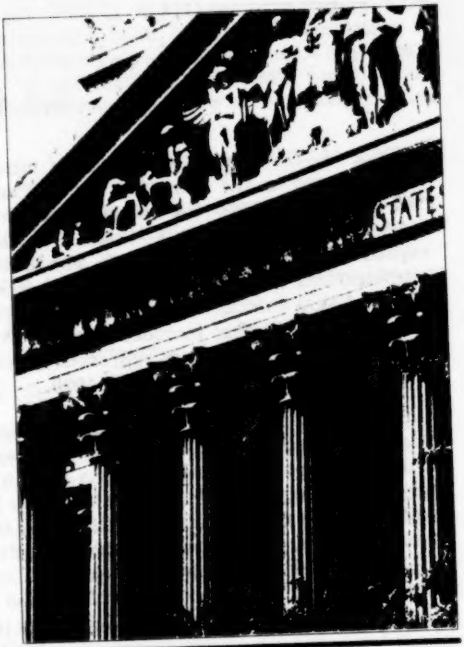
THIS TITLE

Title 46—SHIPPING is composed of nine volumes. The parts in these volumes are arranged in the following order: Parts 1-40, 41-69, 70-89, 90-139, 140-155, 156-165, 166-199, 200-499 and 500-End. The first seven volumes containing Parts 1-199 comprise Chapter I—Coast Guard, Department of Transportation. The eighth volume containing Parts 200 to 499 includes Chapter II—Maritime Administration, Department of Transportation and Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation. The ninth volume containing Part 500-End includes Chapter IV—Federal Maritime Commission. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

Subject indexes appear for Subchapter B—Merchant Marine Officers and Seamen, Subchapter C—Uninspected Vessels, and Subchapter D—Tank Vessels following the subchapters in Parts 1-40; for Subchapter F—Marine Engineering following the subchapter in Parts 41-69; for Subchapter H—Passenger Vessels following the subchapter in Parts 70-89; for Subchapter I—Cargo and Miscellaneous Vessels, Subchapter I-A-Mobile Offshore Drilling Units, and Subchapter J—Electrical Engineering following the subchapters in Parts 90-139; for Subchapter S—Subdivision and Stability and for Subchapter T—Small Passenger Vessels (Under 100 Gross Tons) following the subchapters in Parts 166-199.

Redesignation tables for Chapter I—Coast Guard appear in the Finding Aids section of the volumes containing Parts 1-40, Parts 41-69, Parts 70-89, Parts 90-139, Parts 140-155, Parts 156-165, and Parts 166-199. A redesignation table for Chapter II—Maritime Administration appears in the Finding Aids section of the volume containing Parts 200-499. A redesignation table for Chapter IV—Federal Maritime Commission appears in the Finding Aids section of the volume containing Part 500-End.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.



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Title 46—Shipping

(This book contains Part 500 to End)

Part

CHAPTER IV—Federal Maritime Commission 500

CROSS REFERENCES: U.S. Customs Service, Department of the Treasury: See Customs Duties, 19 CFR Chapter I.

Coast Guard, Department of Transportation: See Navigation and Navigable Waters, 33 CFR Chapter I; Shipping, 46 CFR Chapter I; Federal Acquisition Regulations, 48 CFR Chapter 12.

Foreign-Trade Zones Board: See Commerce and Foreign Trade, 15 CFR Chapter IV.

Interstate Commerce Commission: See Transportation, 49 CFR Chapter X.

Canal Zone Regulations: See Panama Canal, 35 CFR Chapter I.

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Authority: 46 U.S.C. app. 1111, 18 U.S.C. 207, 208; 5 CFR Part 735; E.O. 11222 of May 8, 1965, 30 FR 6469, (3 CFR, 1965 Supp.).

Source: 49 FR 44363, Nov. 6, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 500.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. Reorganization Plan No. 7 of 1961, which established the Federal Maritime Commission, and section 201(b) of the Merchant Marine Act of 1936 (46 U.S.C. app. 1111(b)), provide that officials or employees of the Commission are prohibited from employment with, or to have any pecuniary interest in, or hold any official relationship with, carriers by water, shipbuilder contractors, or other persons, firms, associations or corporations with whom the Commission may have business relations. The following sections of this part are in accordance with the requirements of the Office of Personnel Management's regulations (5 CFR 735) under Executive Order 11222, dated May 8, 1965.

§ 500.102 Definitions.

For the purposes of this part:

(a) *Commission* means the Federal Maritime Commission unless otherwise designated.

(b) *Employee* means an employee of the Commission but does not include a special Government employee.

(c) *Executive order* means Executive Order 11222 of May 8, 1965.

(d) *OPM* means the United States Office of Personnel Management.

(e) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, a foreign government or any other organization or institution.

(f) *Special Government employee* means a "special Government employee" as defined in section 202 of Title 18, U.S. Code, who is employed in the executive branch, but does not include a member of the uniformed services as defined in section 2101 of Title 5 U.S. Code.

§§ 500.103—500.104 [Reserved]

§ 500.105 Interpretation and advisory service.

(a) The Chairman of the Commission shall designate an employee with the appropriate legal experience and in whom he or she has complete personal confidence to be the Counselor for the Commission on matters in connection with the regulations in this part. The Counselor shall also serve as the Commission's designee to OPM on matters covered by the regulations in this part. The Counselor shall exercise responsibility for effectuation and coordination of the Commission's regulations and provide counseling and interpretations on questions of conflicts of interest and other matters covered by the regulations in this part.

(b) The Chairman of the Commission shall designate one or more Deputy Counselors who shall be qualified and in a position to give authoritative advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) Employees and special Government employees shall be notified of the availability of counseling services and of how and where these services are available. This notification shall be made within ninety (90) days after approval of the regulations in this part and periodically thereafter. In the case of a new employee or special Government employee appointed after this notification, notification shall be made at the time of his or her entrance on duty.

§ 500.106 Reviewing statements and reporting conflicts of interest.

(a) There is hereby established a system for the review of Statements of Employment and Financial Interests, Annual Statements, and Executive Personnel Financial Disclosure Reports submitted under Subpart D of this part. This system of review is designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees or special Government employees.

(b) The Counselor or Deputy Counselor shall review each such Statement and Report. Whenever it appears to the Counselor that a Statement or Report contains evidence of a conflict of interest, he or she shall notify the person signing that statement and shall discuss with him or her the information which gives rise to the apparent or real conflict and offer him or her an opportunity to explain the conflict or appearance of conflict. If the conflict or appearance of conflict is not resolved after this discussion, the information concerning the conflict or appearance of conflict shall be reported to the Chairman of the Commission by the Counselor.

§ 500.107 Disciplinary and other remedial action.

(a) A violation of the regulations in this part by an employee or special Government employee may be cause for an appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) If after consideration of the explanation of the employee as provided in § 500.106, and the Chairman decides that remedial action is required, the Chairman shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, executive orders, and regulations and may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his or her conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

§ 500.108 Conflicts of interest.

A Commission employee's or special Government employee's financial or pecuniary interest in an entity regulated by the Commission [such as, e.g., ocean common carriers, ocean freight forwarders and marine terminal operators (including their parent companies)], shall be deemed to create a conflict of interest. A Commission employee or special Government employee shall also be deemed to have a conflict of interest if a member of his or her immediate household is employed by an entity regulated by the Commission and his or her professional duties or assignments relate to or involve that family member's employer.

§ 500.109 Rereading the Standards of Conduct.

It is the responsibility of every Commission employee and special Government employee to become familiar with the Commission's Standards of Conduct and to reread them at least once a year.

Subpart B—General Standards of Conduct

§ 500.201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 500.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions to paragraph (a) of this section are as follows:

(1) This section shall not be construed to proscribe conduct involving obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) Under this section, Commission employees are permitted to accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(3) Under this section, employees are permitted to accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) Under this section employees shall be permitted to accept unsolicited advertising or promotional material, such as pens, pencils, note pads,

calendars and other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an official superior, make a donation as a gift to an official supervisor, or accept a gift from an employee receiving less pay than himself or herself (5 U.S.C. 7351), except that this paragraph does not prohibit the use of a completely voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and by section 7342 of Title 5 U.S. Code.

(e) Neither this section nor § 500.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General, dated March 7, 1967 (46 Comp. Gen. 689).

§ 500.203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209). This paragraph does not apply to special Government employees.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, and writing (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of OPM or Board of Examiners for the Foreign Service), that is dependent on information obtained as a result of the employee's Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law; or

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 500.204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest in an entity regulated by the Commission as set forth in § 500.108;

(2) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities; or

(3) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, the regulations contained in 5 CFR Part 735, or the regulations in this part.

§ 500.205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

§ 500.206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 500.203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his or her Government employment which has not been made available to the general public.

§ 500.207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by court, or one imposed by law, such as Federal, State or local taxes; and "in a proper and timely manner" means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

[49 FR 44363, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 500.208 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 or similar Commission approved activities.

§ 500.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 500.210 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of this Commission and of the Government. The attention of Commission employees is directed to the outside employment restriction in 46 U.S.C. app. 1111(b) and the following statutory provisions relating to ethical and other conduct.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72A Stat. B12 the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against certain political activities in Subchapter III of Chapter 73 of Title 5 U.S.C., and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 500.211 Release of confidential or nonpublic information.

An employee shall not divulge to any unauthorized person any nonpublic or confidential Commission document or information, including the results of portions of Commission meetings closed to the public pursuant to 46 CFR Part 503, Subpart H, and comments made, information divulged or memoranda prepared incidental to such closed meetings, except pursuant to the procedures of 5 U.S.C. 552, 552a and 552b and 46 CFR Part 503 or as specifically directed by the Commission. Employees are also reminded of the provisions of §§ 555.5 and 555.6 of this chapter, which relate to confidentiality of information obtained in the course of official Commission audits, and which provide for penalties for disclosure of confidential information.

[49 FR 44363, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 500.212 Post employment conflict of interest; restriction of activities of certain Federal employees; procedures.

Title V of the Ethics in Government Act proscribes certain activities by certain former Federal employees (18 U.S.C. 207). The full text of the statute, OPM regulations and examples of how the restrictions and basic procedures apply are available from the Ethics Counselor. In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

(a) *Restrictions.* (1) No former Commission employee may represent in any formal or informal appearance or make any oral or written communication with intent to influence a U.S. Government agency in a particular matter involving a specific party or parties in which the employee participated personally and substantially while with the Commission.

(2) No former Commission employee may, within two years of terminating Commission employment, act as a representative in the manner described in paragraph (a) of this section, as to a particular matter which was actually pending under the employee's official responsibility within one year prior to termination of the employment.

(3) Former senior Commission employees (defined as Commissioners and members of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1)) may not, for two years after terminating Commission employment, assist in representing a person by personal presence at an appearance before the Government on a matter in which the former employee had participated personally and substantially while at the Commission.

(4) Former senior Commission employees, as defined in paragraph (c) of this section, are barred for one year from representing parties before the Commission or communicating with intent to influence the Commission, regardless of prior involvement in the particular proceeding.

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to the requirements of Subpart B of the Commission's Rules of Practice (§§ 502.21 to 502.32 of this chapter), every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

(2) To facilitate the Commission's determination that the intended activity is not prohibited, applications for written consent shall:

(i) Be directed to the Commission, state the former connection of the applicant with the Commission and date of termination of employment, and identify the matter in which the applicant desires to appear; and

(ii) Be accompanied by an affidavit to the effect that the matter for which consent is requested is not a matter in which the applicant participated personally and substantially while at the Commission and, as made applicable by paragraph (a) of this section, that the particular matter as to which consent is requested was not pending under the applicant's official responsibility within one year prior to termination of employment and that the matter was not one in which the former employee had participated personally and substantially while at the Commission. The statements contained in the affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(3) The applicant shall be promptly advised as to his or her privilege to appear, represent or communicate in the particular matter, and the application, affidavit and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto.

(c) *Basic procedures for possible violations.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director of the Office of Government Ethics as required pursuant to section 207(j) of Title 18, United States Code.

(1) *Delegation.* The Chairman may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(ii) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated any provision of paragraph (a) of this section or 18 U.S.C. 207 (a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (c)(3) of this section.

(3) *Adequate notice.* (i) The Commission shall provide a former Commission employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Commission employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at a proceeding under this section shall be an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) The examiner must be a Commissioner (other than the Chairman), an administrative law judge, or an attorney employed by the Commission and shall be provided with appropriate administrative and secretarial support by the Commission.

(iii) The presiding official shall be impartial. No individual who has participated in any manner in the decision to initiate a proceeding may serve as an examiner in that proceeding.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Commission employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel;

(ii) To introduce and examine witnesses and to submit physical evidence;

(iii) To confront and cross-examine adverse witnesses;

(iv) To present oral argument; and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the Commission has the burden of proof and must establish substantial evidence of a violation.

(8) *Initial decision.* (i) The examiner shall make a determination on matters exclusively of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the Commission, either party may appeal the decision solely on the record to the Chairman. The Chairman shall base his or her decision solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the Chairman modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the examiner.

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years, which may be accomplished by directing Commission employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section may seek judicial review of the administrative determination.

(11) *Consultation and review.* The procedures for administrative enforce-

ment set forth in this section have been reviewed by the Director of the Office of Government Ethics.

[49 FR 44363, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart C—Special Government Employees Standards of Conduct

§ 500.301 Application to special Government employees.

Unless specifically excepted by rule or by the Chairman of the Commission, the General Standards of Conduct contained in subpart B hereof (§§ 500.201 to 500.212), apply to special Government employees. Each special Government employee shall acquaint himself or herself with the General Standards, with each statute that relates to his or her ethical and other conduct as a special Government employee of the Commission and the Government, and with the following, minimum standards of this subpart governing the ethical and other conduct of special Government employees.

§ 500.302 Special Government employees—Use of Government employment.

A special Government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.303 Special Government employees—Use of inside information.

Except as provided in § 500.203(c), a special Government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself, herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business or financial ties. For the purpose of this paragraph, "inside information" means information obtained under Government authority which has not become part of the body of public information.

§ 500.304 Special Government employees—Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 500.305 Special Government employees—Gifts.

Except as provided in § 500.203(b), a special Government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the Commission, anything of value as a gift, gratuity, loan, entertainment, or favor for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

Subpart D—Statements of Employment and Financial Interests; Executive Personnel Financial Disclosure Reports

§§ 500.401—500.402 [Reserved]

§ 500.403 Persons required to submit Statements of Employment and Financial Interests.

(a) The Chairman, the Commissioners, and all employees and special Government employees of the Commission, without exception, shall file Statements of Employment and Financial Interests and Annual Statements.

(b) Any employee or special Government employee who thinks his or her position has been improperly included under these regulations as one requiring the submission of a Statement of Employment and Financial Interests and Annual Statements is entitled to a review of this determination.

§ 500.404 [Reserved]

§ 500.405 Time and place for submission of Statements of Employment and Financial Interests.

All Statements of Employment and Financial Interests shall be submitted to the Counselor designated under § 500.105 within thirty (30) days of the effective date of the employee's appointment, except that special Government employees shall submit such Statements on or prior to the effective date of their appointment.

§ 500.406 Annual Statements and Termination Reports.

(a) Changes in, or additions to, employment and financial interests shall be reported in an Annual Statement to be filed no later than May 15 of each year, the reporting period being the previous calendar year, except that special Government employees shall submit such Annual Statements no later than fifteen (15) calendar days following any change in, or addition to, their employment or financial interests.

(b) Notwithstanding the filing of the Annual Statement required by this section, each employee and special Government employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18 U.S. Code, or subpart B of this part.

(c) A Termination Report must also be filed upon an employee's termination of employment, the reporting period being the time which has not been covered by the previous initial or supplementary statement.

§ 500.407 Interests to be reported in Statements of Financial Interests and Annual Statements.

Each Statement of Employment and Financial Interests and each Annual Statement shall include all the employment and financial interests of the person reporting, as well as all employment and financial interests of such person's spouse, minor child, or other member of the immediate household. For the purposes of this section, "members of the immediate household" means those blood relatives of the person reporting who are residents of the person's household. With respect to each position or financial interest reported in the Statement of Employment and Financial Interests and the Annual Statements, the person reporting shall specify whether such position or financial interest is held by: (a) The person reporting, (b) the spouse, (c) a minor child, or (d) a blood relative residing in the household.

§ 500.408 Information not known by the person reporting.

If any information required to be included in a Statement of Employment and Financial Interests or an Annual Statement, including holdings placed in trust, is not known to the person reporting, but is known to another person, the person reporting shall request such other person to submit information on his or her behalf.

§ 500.409 Information exempted.

The regulations in this subpart do not require a person to submit any information in an Annual Statement of Employment and Financial Interests or in an Annual Statement relating to any connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For the purpose of this section, education and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in a person's Statement of Employment and Financial Interests and in the Annual Statement.

§ 500.410 Confidentiality of Statements.

The Commission shall hold each Statement of Employment and Financial Interests, and each Annual Statement, in the strictest confidence. The Commission shall not disclose any information contained in such Statements, except as provided by law. To ensure confidentiality, the Counselor authorized in § 500.105 to retain and review the Statements shall be the sole custodian of the Statements and shall not disclose or authorize disclosure of information contained therein, except to carry out the purposes of this part.

§ 500.411 Conduct, employment or holdings otherwise prohibited and reporting otherwise required by law.

The submission of a Statement of Employment and Financial Interests or Annual Statement, as required by this subpart, does not in any way excuse the person submitting such Statement from violations of the criminal provisions of section 208 of Title 18 U.S. Code, the provisions of section 201(b) of the Merchant Marine Act, 1936, (46 U.S.C. 1111(b)) or the provisions of subpart B of this part. Moreover, the submission of any such Statement is in addition to, and not in substitution for, or in derogation of, any similar reporting requirement imposed by law, order, or regulation.

§ 500.412 Executive Personnel Financial Disclosure Reports (SF 278).

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-521) (the "Act") prescribes a public financial disclosure reporting requirement for certain officers and employees in addition to other requirements of this subpart. The requirements and procedures are set forth in detail in the Act as well as in implementing regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees required to file.* The following Commission employees are required to file the Executive Personnel Financial Disclosure Report:

(1) The five Commissioners;

(2) Officers and employees (including special Government employees) who have served in their position for sixty-one (61) days or more during the preceding calendar year, whose positions are classified and paid at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS-16. This category includes employees of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1).

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;

(4) Administrative law judges;

(5) Employees in the excepted service in positions which are of a confidential or policymaking character including confidential assistants to the Commissioners, unless their positions have been excluded by the Director of the Office of Government Ethics;

(6) The Designated Agency Ethics Counselor.

(c) *Time of filing*—(1) *Initial appointment.* Within five (5) days after transmittal by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within thirty (30) days after first assuming a position described in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this section, a SF 278 must be filed.

(2) *Incumbents.* No later than May 15 annually, a SF 278 must be filed by incumbents of any of the positions listed in Paragraph (b) of this section.

(3) *Terminations.* No later than thirty (30) days after an incumbent of a position listed in paragraph (b) of this section terminates that position, the individual shall file a SF 278.

(d) *Place of filing.* All reports required to be filed by this section shall be submitted on or before the due date to the designated Agency Ethics Counselor.

(e) *Where to seek help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, an employee may contact the Commission Ethics Counselor or the Deputy Ethics Counselor.

(f) *Failure to submit report.* Falsification of, or knowing or willful failure to file or report information required to be reported by section 202 of the Act may subject the individual to a civil penalty and to internal disciplinary action, as well as criminal penalties under 18 U.S.C. 1001.

PART 501—OFFICIAL SEAL OF THE FEDERAL MARITIME COMMISSION

Sec.

501.1 Purpose.
501.2 Description.
501.3 Design.

Authority: 46 U.S.C. App. 1111 and 1114; Reorganization Plan No. 7 of 1961, 26 FR 7315, Aug. 12, 1961.

Source: 49 FR 44369, Nov. 6, 1984, unless otherwise noted.

§ 501.1 Purpose.

To prescribe and give notice of the official seal of the Federal Maritime Commission.

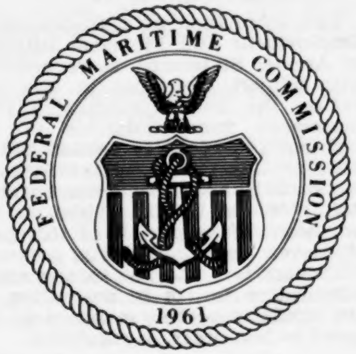
§ 501.2 Description.

(a) Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Federal Maritime Commission hereby prescribes its official seal, as adopted by the Commission on August 14, 1961, the design of which is illustrated below and described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Federal Maritime Commission was created.

§ 501.3 Design.



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AUTHORITY: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

SOURCE: 49 FR 44369, Nov. 6, 1984, unless otherwise noted.

Subpart A—General Information

§ 502.1 Scope of rules in this part.

The rules in this part govern procedure before the Federal Maritime Commission, hereinafter referred to as the *Commission*, under the Shipping Act, 1916, Merchant Marine Act, 1920, Intercoastal Shipping Act, 1933, Merchant Marine Act, 1936, Shipping Act of 1984, Administrative Procedure Act, and related acts, except that subpart R of this part does not apply to proceedings subject to sections 7 and 8 of the Administrative Procedure Act, which are to be governed only by subparts A to Q inclusive, of this part. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. [Rule 1.]

§ 502.2 Filing of documents; hours; mailing address.

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4) and petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to *Secretary, Federal Maritime Commission, Washington, DC 20573-0001.* Petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a) shall be addressed to *General Counsel, Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573-0001.*

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter pending before the Commission which is likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See § 503.82(e) of this chapter.) [Rule 2]

[52 FR 27002, July 17, 1987, as amended at 53 FR 13270, Apr. 22, 1988]

§ 502.3 Compliance with rules or orders of Commission.

Persons named in a rule or order shall notify the Commission during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith, and if so, the manner in which compliance has been made. If a change in rates is required, the notification shall specify the tariffs which effect the changes. [Rule 3.]

§ 502.4 Authentication of rules or orders of Commission.

All rules or orders issued by the Commission in any proceeding covered by this part shall, unless otherwise specifically provided, be signed and authenticated by seal by the Secretary of the Commission in the name of the Commission. [Rule 4.]

§§ 502.5—502.6 [Reserved]

§ 502.7 Documents in foreign languages.

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, shall be filed or offered in the language in which it is written and shall be accompanied by an English translation thereof duly verified under oath to be an accurate translation. [Rule 7.]

§ 502.8 Denial of applications and notice thereof.

Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any proceeding under this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds. [Rule 8.]

§ 502.9 Suspension, amendment, etc., of rules in this part.

The rules in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the FEDERAL REGISTER. [Rule 9.]

§ 502.10 Waiver of rules in this part.

Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except §§ 502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires. [Rule 10.]

§ 502.11 Disposition of improperly filed documents and ex parte communications.

(a) *Documents not conforming to rules.* Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender;

(b) *Ex parte communications.* (1) No person who is a party to or an agent of a party to any proceeding as defined in § 502.61 or who directly participates in any such proceeding and no interested person outside the Commission shall make or knowingly cause to be made to any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(2) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication relevant to the merits of the proceeding. This prohibition shall not be construed to prevent any action authorized by paragraphs (b) (5), (6) and (7) of this section;

(3) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or communications regarding purely procedural matters or matters which the Commission or member thereof, administrative law judge, or Commission employee is authorized by law or these rules to dispose of on an ex parte basis;

(4) Any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any proceeding who receives, or who makes or knowingly causes to be made, an ex parte communication shall promptly transmit to the Secretary of the Commission:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section;

(5) The Secretary shall place the materials described in paragraph (b)(4) of this section in the correspondence part of the public docket of the proceeding and may take such other action as may be appropriate under the circumstances;

(6) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party to a proceeding, the Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the making of such communication;

(7) An ex parte communication shall not constitute a part of the record for decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart B—Appearance and Practice Before the Commission

§ 502.21 Appearance.

(a) *Parties.* A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

(b) *Persons not parties.* One who appears in person before the Commission or a representative thereof, either by compulsion from, or request or permission of the Commission, shall be accorded the right to be accompanied, represented, and advised by counsel.

(c) *Special requirement.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. If a person desires to appear specially, he or she must expressly so state when entering the appearance and, at that time, shall also state the questions or issues to which he or she is confining the appearance; otherwise his or her appearance will be considered as general. [Rule 21.]

§ 502.22 Authority for representation.

Any individual acting in a representative capacity in any proceeding before the Commission may be required to show his or her authority to act in such capacity. [Rule 22.]

§ 502.23 Notice of appearance; written appearance; substitutions.

(a) Within twenty (20) days after service of an order or complaint instituting a proceeding, complainants, respondents, and/or petitioners named therein shall notify the Commission of the name(s) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted. If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the client to the Commission.

(b) A form of Notice of Appearance is set forth in Exhibit No. 1 to this subpart. This form also contains a request and authorization for counsel to be notified immediately of the service of decisions of the presiding officer and the Commission by collect telephone call or telegram. Copies of this form may be obtained from the Office of the Secretary. [Rule 23.]

§ 502.24 Practice before the Commission defined.

(a) Practice before the Commission shall be deemed to comprehend all matters connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission, on one's own behalf or representing another. (See § 502.32).

(b) The term "Commission" as used in this subpart includes any bureau, division, office, branch, section, unit, or field office of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, unit, or field office. [Rule 24.]

§ 502.25 Presiding officer defined.

"Presiding officer" means and shall include (a) any one or more of the members of the Commission (not including the Commission when sitting as such), (b) one or more administrative law judges or (c) one or more officers authorized by the Commission to conduct nonadjudicatory proceedings when duly designated to preside at such proceedings. (See Subpart J of this part.) [Rule 25.]

§ 502.26 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Commission. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof, if made in writing and filed with the Secretary. [Rule 26.]

§ 502.27 Persons not attorneys at law.

(a) Any person who is not an attorney at law may be admitted to practice before the Commission if he or she is a citizen of the United States and files proof to the satisfaction of the Commission that he or she possesses the necessary legal, technical, or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission. Applications by persons not attorneys at law for admission to practice before the Commission shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Commission, and shall be addressed to the Federal Maritime Commission, Washington, DC, 20573, and shall be accompanied by a fee as required by § 503.43(h) of this chapter.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Commission.

(c) Paragraph (b) of this section and the provisions of §§ 502.28, 502.29 and 502.30 shall not apply, however, to any person who appears before the Commission on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee. [Rule 27.]

§ 502.28 Firms and corporations.

Practice before the Commission by firms or corporations on behalf of others shall not be permitted. [Rule 28.]

§ 502.29 Hearings.

The Commission, in its discretion, may call upon the applicant for a full statement of the nature and extent of his or her qualifications. If the Commission is not satisfied as to the sufficiency of the applicant's qualifications, it will so notify him or her by registered mail, whereupon he or she shall be granted a hearing upon request for the purpose of showing his or her qualifications. If the applicant presents to the Commission no request for such hearing within twenty (20) days after receiving the notification above referred to, his or her application shall be acted upon without further notice. [Rule 29.]

§ 502.30 Suspension or disbarment.

The Commission may deny admission to, suspend, or disbar any person from practice before the Commission who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper professional conduct. Any person who has been admitted to practice before the Commission may be disbarred from such practice only after being afforded an opportunity to be heard. [Rule 30.]

§ 502.31 Statement of interest.

The Commission may call upon any practitioner for a full statement of the nature and extent of his or her interest in the subject matter presented by him or her before the Commission. [Rule 31.]

§ 502.32 Former employees.

Title V of the Ethics in Government Act proscribes certain activities by certain former Federal employees (18 U.S.C. 207). In summary, as applied to former Commission employees, the restrictions and basic procedures are as follows:

(a) *Restrictions.* (1) No former Commission employee may represent in any formal or informal appearance or make any oral or written communication with intent to influence a U.S. Government agency in a particular matter involving a specific party or parties in which the employee participated personally and substantially while with the Commission.

(2) No former Commission employee may, within two years of terminating Commission employment, act as a representative in the manner described in paragraph (a)(1) of this section, as to a particular matter which was actually pending under the employee's official responsibility within one year prior to termination of the employment.

(3) Former senior Commission employees (defined as Commissioners and members of the Senior Executive Service as designated by the Office of Government Ethics under 18 U.S.C. 207(d)(1)) may not, for two years after terminating Commission employment, assist in representing a person by personal presence at an appearance before the Government on a matter in which the former employee had participated personally and substantially while at the Commission.

(4) Former senior Commission employees, as defined in paragraph (a)(3) of this section, are barred for one year from representing parties before the Commission or communicating with intent to influence the Commission, regardless of prior involvement in the particular proceeding.

(b) *Prior consent for appearance.* (1) Prior to making any appearance, representation or communication described in paragraph (a) of this section, and, in addition to other requirements of this subpart, every former employee must apply for and obtain prior written consent of the Commission for each proceeding or matter in which such appearance, representation, or communication is contemplated. Such consent will be given only if the Commission determines that the appearance, representation or communication is not prohibited by the Act, this section or other provisions of this chapter.

(2) To facilitate the Commission's determination that the intended activity is not prohibited, applications for written consent shall:

(i) Be directed to the Commission, state the former connection of the applicant with the Commission and date of termination of employment, and identify the matter in which the applicant desires to appear; and

(ii) Be accompanied by an affidavit to the effect that the matter for which consent is requested is not a matter in which the applicant participated personally and substantially while at the Commission and, as made applicable by paragraph (a) of this section, that the particular matter as to which consent is requested was not pending under the applicant's official responsibility within one year prior to termination of employment and that the matter was not one in which the former employee had participated personally and substantially while at the Commission. The statements contained in the affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(3) The applicant shall be promptly advised as to his or her privilege to appear, represent or communicate in the particular matter, and the application, affidavit and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto.

(c) *Basic procedures for possible violations.* The following basic guidelines for administrative enforcement restrictions on post employment activities are designed to expedite consultation with the Director of the Office of Government Ethics as required pursuant to section 207(j) of Title 18, United States Code.

(1) *Delegation.* The Chairman may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(ii) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated any provision of paragraph (a) of this section or 18 U.S.C. 207 (a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (c)(3) of this section.

(3) *Adequate notice.* (i) The Commission shall provide a former Commission employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Commission employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Commission employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at a proceeding under this section shall be an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) The examiner must be a Commissioner (other than the Chairman), an administrative law judge, or an attorney employed by the Commission and shall be provided with appropriate administrative and secretarial support by the Commission.

(iii) The presiding official shall be impartial. No individual who has participated in any manner in the decision to initiate a proceeding may serve as an examiner in that proceeding.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Commission employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel;

(ii) To introduce and examine witnesses and to submit physical evidence;

(iii) To confront and cross-examine adverse witnesses;

(iv) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the Commission has the burden of proof and must establish substantial evidence of a violation.

(8) *Initial decision.* (i) The examiner shall make a determination on matters exclusively of record in a proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the Commission, either party may appeal the decision solely on the record to the Chairman. The Chairman shall base his or her decision solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the Chairman modifies or reverses the initial decision, he or she shall specify such findings of facts and conclusions of law as are different from those of the examiner.

(9) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section after a final administrative decision or who failed to request a hearing after receiving adequate notice by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years, which may be accomplished by directing Commission employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or the provisions of paragraph (a) of this section may seek judicial review of the administrative determination.

(11) *Consultation and review.* The procedures for administrative enforcement set forth in paragraphs (a), (b), and (c) of this section have been reviewed by the Director of the Office of Government Ethics.

(d) *Partners or associates.* (1) In any case in which a former member, officer, or employee of the Commission is prohibited under this section from practicing, appearing, or representing anyone before the Commission in a particular Commission matter, any partner or legal or business associate of such former member, officer, or employee shall be prohibited from (i) utilizing the services of the disqualified former member, officer, or employee in connection with the matter, (ii) discussing the matter in any manner with the disqualified former member, officer, or employee, and (iii) sharing directly or indirectly with the disqualified former member, officer, or employee in any fees or revenues received for services rendered in connection with such matter.

(2) The Commission may require any practitioner or applicant to become a

practitioner to file an affidavit to the effect that the practitioner or applicant will not: (i) Utilize the service of, (ii) discuss the particular matter with, or (iii) share directly or indirectly any fees or revenues received for services provided in the particular matter, with a partner, fellow employee, or legal or business associate who is a former member, officer or employee of the Commission and who is either permanently or temporarily precluded from practicing, appearing or representing anyone before the Commission in connection with the particular matter; and that the applicant's employment is not prohibited by any law of the United States or by the regulations of the Commission. [Rule 32.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

EXHIBIT NO. 1 TO SUBPART B [§§ 502.23, 502.26, 502.27]

NOTICE OF APPEARANCE

Federal Maritime Commission

Notice of Appearance

Docket No. ——:

Please enter my appearance in this proceeding as counsel for:

☐ I request to be informed by telephone or telegram of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding. In the event I am not available when you call, appropriate advice left with my office will suffice.

Washington area: I understand I will be informed by telephone.

Outside Washington area: I authorize

☐ collect telephone call

☐ collect telegram

☐ I do not desire the above notice.

[Name]

[Address]

[Telephone No.]

NOTE: Must be signed by attorney at law admitted to practice before the Federal Courts or before the courts of any State or Territory of the United States or by a person not an attorney at law who has been admitted to practice before the Commission or by a person appearing on his or her own behalf or on behalf of any corporation, partnership, or association of which he or she is a partner, officer, or regular employee.

Subpart C—Parties

§ 502.41 Parties; how designated.

The term "party", whenever used in the rules in this part, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action under § 502.62 shall be designated as "complainant". A party against whom relief or other affirmative action is sought in any proceeding commenced under § 502.62, § 502.66, or § 502.67, or a party named in an order of investigation issued by the Commission, shall be designated as "respondent," except that in investigations instituted under section 15 of the Shipping Act, 1916 or section 11(c) of the Shipping Act of 1984, the parties to the agreement shall be designated as "proponents" and the parties protesting the agreement shall be designated as "protestants". A person who has been permitted to intervene under § 502.72 shall be designated as "intervenor". All persons or parties designated in this section shall become parties to the proceeding involved without further pleadings, and no person other than a party or its representative may introduce evidence or examine witnesses at hearings. [Rule 41.]

§ 502.42 Hearing counsel.

The Director, Bureau of Hearing Counsel, shall be a party to all proceedings governed by the rules in this part, except that in complaint proceedings under § 502.62, the Director may become a party only upon leave to intervene granted pursuant to § 502.72, and in rulemaking proceedings, the Director may become a party by designation, if the Commission determines that the circumstances of the proceeding warrant such participation. The Director or the Director's representative shall be designated as "Hearing Counsel" and shall be served with copies of all papers, pleadings, and documents in every proceeding in which Hearing Counsel is a party. Hearing Counsel shall actively participate in any proceeding to which the Director is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See § 502.224.) [Rule 42.]

§ 502.43 Substitution of parties.

In appropriate circumstances, the Commission or presiding officer may order an appropriate substitution of parties. [Rule 43.]

§ 502.44 Necessary and proper parties in certain complaint proceedings.

(a) If a complaint relates to through transportation by continuous carriage or transshipment, all carriers participating in such through transportation shall be joined as respondents.

(b) If the complaint relates to more than one carrier or other person subject to the shipping acts, all carriers or other persons against whom a rule or order is sought shall be made respondents.

(c) If complaint is made with respect to an agreement filed under section 15 of the Shipping Act, 1916 or section 5(a) of the Shipping Act of 1984, the parties to the agreement shall be made respondents. [Rule 44.]

Subpart D—Rulemaking

§ 502.51 Petition for issuance, amendment, or repeal of rule.

Any interested party may file with the Commission a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to subpart H of this part. Petitions shall be accompanied by remittance of a $50 filing fee. Replies to such petition shall conform to the requirements of § 502.74. [Rule 51.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990]

§ 502.52 Notice of proposed rulemaking.

(a) General notice of proposed rulemaking, including the information specified in § 502.143, shall be published in the FEDERAL REGISTER, unless all persons subject thereto are named and, either are personally served, or otherwise have actual notice thereof in accordance with law.

(b) Except where notice of hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, procedure, or practice of the Commission, or any situation in which the Commission for good cause finds (and incorporates such findings in such rule) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. [Rule 52.]

§ 502.53 Participation in rulemaking.

(a) Interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner. No replies to the written submissions will be allowed unless, because of the nature of the proceeding, the Commission indicates that replies would be necessary or desirable for the formulation of a just and reasonable rule, except that, where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, such hearing shall be conducted pursuant to 5 U.S.C. 556 and 557, and the procedure shall be the same as stated in subpart J of this part. In the event that replies or succeeding rounds of comments are permitted, copies shall be served on all prior participants in the proceeding. A list of participants may be obtained from the Secretary of the Commission.

(b) In those proceedings in which respondents are named, interested persons who wish to participate shall file a petition to intervene in accordance with the provisions of § 502.72 [Rule 53.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990]

§ 502.54 Contents of rules.

The Commission will incorporate in any rules adopted a concise general statement of their basis and purpose. [Rule 54.]

§ 502.55 Effective date of rules.

The publication or service of any substantive rule shall be made not less than thirty (30) days prior to its effective date except (a) as otherwise provided by the Commission for good cause found and published in the FEDERAL REGISTER or (b) in the case of rules granting or recognizing exemption or relieving restriction; interpretative rules; or statements of policy. [Rule 55.]

Subpart E—Proceedings; Pleadings; Motions; Replies

§ 502.61 Proceedings.

(a) Proceedings are commenced by the filing of a complaint, or by order of the Commission upon petition or upon its own motion, or by reference by the Commission to the formal docket of a petition for a declaratory order.

(b) In proceedings referred to the Office of Administrative Law Judges, the Commission shall specify a date on or before which hearing shall commence, which date shall be no more than six months from the date of publication in the FEDERAL REGISTER of the Commission's order instituting the proceedings or notice of complaint filed. Hearing dates may be deferred by the presiding judge only to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party.

(c) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission shall establish dates by which the initial decision and the final Commission decision will be issued. These dates may be extended by order of the Commission for good cause shown. [Rule 61.]

§ 502.62 Complaints and fee.

(a) The complaint must be verified and shall contain the name and address of each complainant, the name and address of each complainant's attorney or agent, the name and address of each person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought.

(b) Where reparation is sought and the nature of the proceeding so requires, the complaint shall set forth: the ports of origin and destination of the shipments; consignees, or real parties in interest, where shipments are on "order" bill of lading; consignors; date of receipt by carrier or tender of delivery to carrier; names of vessels; bill of lading number (and other identifying reference); description of commodities; weights; measurement; rates; charges made or collected; when, where, by whom and to whom rates and charges were paid; by whom the rates and charges were borne; the amount of damage; and the relief sought. Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically asked for, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding. Wherever a rate, fare, charge, rule, regulation, classification, or practice is involved, appropriate reference to the tariff should be made, if possible.

(c) If the complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary.

(d) The complaint should designate the place at which hearing is desired.

(e) A form of complaint is set forth in Exhibit No. 1 to this subpart.

(f) The complaint shall be accompanied by remittance of a $50 filing fee.

(g) For special types of cases, see § 502.92 in subpart F (Special Docket applications for refund or waiver); subpart K (Shortened Procedure); and subpart S (Small Claims). [Rule 62.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28399, July 11, 1990]

§ 502.63 Reparation; statute of limitations.

(a) Complaints seeking reparation pursuant to section 22 of the Shipping Act, 1916 shall be filed within two (2) years after the cause of action accrues.

(b) Complaints seeking reparation pursuant to section 11 of the Shipping Act of 1984 shall be filed within three years after the cause of action accrues.

(c) The Commission will consider as in substantial compliance with a statute of limitations a complaint in which complainant alleges that the matters complained of, if continued in the future, will constitute violations of the shipping acts in the particulars and to the extent indicated and in which complainant prays for reparation accordingly for injuries which may be sustained as a result of such violations. (See §§ 502.251–502.253 and Exhibit No. 1 to subpart O.)

(d) Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the applicable statutory period.

(e) A complaint is deemed filed on the date it is received by the Commission. [Rule 63.]

§ 502.64 Answer to complaint.

(a) Respondent shall file with the Commission an answer to the complaint and shall serve it on complainant as provided in subpart H of this part within twenty (20) days after the date of service of the complaint by the Commission or within thirty (30) days if such respondent resides in Alaska or beyond the Continental United States, unless such periods have been extended under § 502.71 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the complaint, in which latter case, answer shall be made within ten (10) days after service of an order denying such motion. Such answer shall give notice of issues controverted in fact or law. Recitals of material and relevant facts in a complaint, amended complaint, or bill of particulars, unless specifically denied in the answer thereto, shall be deemed admitted as true, but if request is seasonably made, a competent witness shall be made available for cross-examination on such evidence.

(b) In the event that respondent should fail to file and serve the answer within the time provided, the presiding officer may enter such rule or order as may be just, or may in any case require such proof as he or she may deem proper, except that the presiding officer may permit the filing of a delayed answer after the time for filing the answer has expired, for good cause shown.

(c) A form of answer to complaint is set forth in Exhibit No. 2 to this subpart. [Rule 64.]

§ 502.65 Replies to answers not permitted.

Replies to answers will not be permitted. New matters set forth in respondent's answer will be deemed to be controverted. [Rule 65.]

§ 502.66 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order shall be served upon all persons named therein, shall include the information specified in § 502.143, may require the person named therein to answer, and shall require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 66.]

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

(a)(1)(i) The term "general rate increase" means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(ii) The term "general rate decrease" means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in tariffs per trade of any common carrier by water in the intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(2) No general rate increase or decrease shall take effect before the close of the sixtieth day after the day it is posted and filed with the Commission. A vessel operating common carrier (VOCC) shall file, under oath, concurrently with any general rate increase or decrease, testimony and exhibits of such composition, scope and format that they will serve as the VOCC's entire direct case in the event the matter is set for formal investigation, together with all underlying workpapers used in the preparation of the testimony and exhibits. The VOCC shall also certify that copies of testimony and exhibits and underlying workpapers have been filed simultaneously with the attorney general of every noncontiguous State, Commonwealth, possession or Territory having ports in the relevant trade that are served by the VOCC. The contents of underlying workpapers served on attorneys general pursuant to this paragraph are to be considered confidential and are not to be disclosed to members of the public except to the extent specifically authorized by an order of the Commission or a presiding officer. A copy of the testimony and exhibits shall be made available at every port in the trade at the offices of the VOCC or its agent during usual business hours for inspection and copying by any person.

(3) Workpapers underlying financial and operating data filed in connection with proposed rate changes shall be made available promptly by the carrier to all persons requesting them for inspection and copying upon the submission of the following certification, under oath, to the carrier:

CERTIFICATION

I, (Name and title if applicable) ————, of (Full name of company or entity), having been duly sworn, certify that the underlying workpapers requested from (Name of carrier), will be used solely in connection with protests related to and proceedings resulting from (Name of carrier) ————'s rate (increase) (decrease) scheduled to become effective (Date) ———— and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the Carrier, unless public disclosure is specifically authorized by an order of the Commission or the presiding officer.

Signature:. ————————

Date:. ————————

Signed and Sworn to before me this ——— day of ———, 19—.

Notary Public:. ————————

My Commission expires:. ————————

(4) Where a protest contains information obtained in confidence, it will be set out in a separate document, clearly marked on the cover page "Contains Confidential Information." Failure to observe this procedure will subject the protest to rejection.

(5) Failure by the VOCC to meet the service and filing requirements of paragraph (a)(2) of this section may result in rejection of the tariff matter. Such rejection will take place within three work days after the defect is discovered.

(b)(1) Any protest against a proposed general rate increase or decrease made pursuant to section 3 of the Intercoastal Shipping Act, 1933, may be made by letter and shall be filed with the Director, Bureau of Tariffs, and served upon the tariff publishing officer of the carrier pursuant to subpart H of this part no later than thirty (30) days prior to the proposed changes, except that, if the due date for protests falls on a Saturday, Sunday or national legal holiday, such protest must be filed no later than the last business day preceding the weekend or holiday. Persons filing protests pursuant to this section shall be made parties to any docketed proceeding involving the matter protested, provided that the issues raised in the protest are pertinent to the issues set forth in the order of investigation. Protests shall include:

(i) Identification of the tariff in question;

(ii) Grounds for opposition to the change;

(iii) Identification of any specific areas of the VOCC's testimony, exhibits, or underlying data that are in dispute and a statement of position on each area in dispute (VOCC general rate increases or decreases only);

(iv) Specific reasons why a hearing is necessary to resolve the issues in dispute;

(v) Any requests for additional carrier data;

(vi) Identification of any witnesses that protestant would produce at a hearing, a summary of their testimony and identification of documents that protestant would offer in evidence; and

(vii) A subscription and verification.

(2) Protests against other proposed changes in tariffs made pursuant to section 3 of the Intercoastal Shipping Act, 1933, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provision of paragraph (b)(1) of this section relating to the form, place and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against other proposed tariff changes. A protest is deemed filed on the date it is received by the Commission.

(c) Replies to protests shall conform to the requirements of § 502.74.

(d)(1) In the event the general rate increase or decrease of a VOCC is made subject to a docketed proceeding, Hearing Counsel, the VOCC and all protestants shall serve, under oath, testimony and exhibits constituting their direct case, together with underlying workpapers on all parties pursuant to subpart H of this part and lodge copies of testimony and exhibits with the presiding officer no later than seven (7) days after the tariff matter takes effect or, in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(2) If other proposed tariff changes made pursuant to section 3 of the Intercoastal Shipping Act, 1933, are made subject to a docketed proceeding, the carrier, Hearing Counsel and all protestants will simultaneously serve pursuant to subpart H of this part on all parties and lodge with the presiding officer prehearing statements as specified in paragraph (f)(1) of this section no later than seven (7) days after the tariff matter takes effect, or in the case of suspended matter, seven (7) days after the matter would have otherwise gone into effect.

(e)(1) Subsequent to the exchange of prehearing statements by all parties, the presiding officer shall, at his or her discretion, direct all parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(iii) Identification of any issues which require evidentiary hearing;

(iv) Limitation of witnesses and areas of cross-examination, should an evidentiary hearing be necessary;

(v) Requests for subpoenas; and

(vi) Other matters which may aid in the disposition of the hearing, including but not limited to the exchange of written testimony and exhibits.

(2) After considering the procedural recommendations of the parties, the presiding officer shall limit the issues to the extent possible and establish a procedure for their resolution.

(3) The presiding officer shall, whenever feasible, rule orally upon the record on matters presented before him or her.

(f)(1) It shall be the duty of every party to file and serve a prehearing statement on a date specified by the presiding officer, but in any event no later than the date of the prehearing conference.

(2) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth:

(i) Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;

(ii) Identification of any issues which require evidentiary hearing, together with the reasons why these issues cannot be resolved readily on the basis of documents, admissions of facts, stipulations or an alternative procedure;

(iii) Requests for cross-examination of the direct written testimony of specified witnesses, the subjects of such cross-examination and the reasons why alternatives to cross-examination are not feasible;

(iv) Requests for additional, specified witnesses and documents, together with the reasons why the record would be deficient in the absence of this evidence; and

(v) Procedural suggestions that would aid in the timely disposition of the proceeding.

(g) The provisions of this section are designed to enable the presiding officer to complete a hearing within sixty (60) days after the proposed effective date of the tariff changes and submit an initial decision to the Commission within one hundred twenty (120) days pursuant to section 3(b) of the Intercoastal Shipping Act, 1933. The presiding officer may employ any other provision of the Commission's Rules of Practice and Procedure, not inconsistent with this section, in order to meet this objective. Exceptions to the decision of the presiding officer, filed pursuant to § 502.227 shall be served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be served no later than ten (10) days after the date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within 30 days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in § 502.227.

(h) Intervention by persons other than protestants ordinarily shall not be granted. In the event intervention of such persons is granted, the presiding officer of the Commission may attach such conditions or limitations as are deemed necessary to effectuate the purpose of this section. [Rule 67.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.68 Declaratory orders and fee.

(a)(1) The Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.

(2) Petitions for the issuance thereof shall: state clearly and concisely the controversy or uncertainty; name the persons and cite the statutory authority involved; include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest; be served upon all parties named therein; and conform to the requirements of subpart H of this part.

(3) Petitions shall be accompanied by remittance of a $50 filing fee.

(b) Petitions under this section shall be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section shall be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 22 of the Shipping Act, 1916 or section 11 of the Shipping Act of 1984 and § 502.62, or by filing of a petition for investigation under § 502.69.

(c) Petitions under this section shall be accompanied by the complete factual and legal presentation of petitioner as to the desired resolution of the controversy or uncertainty, or a detailed explanation why such can only be developed through discovery or evidentiary hearing.

(d) Replies to the petition shall contain the complete factual and legal presentation of the replying party as to the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Replies shall conform to the requirements of § 502.74 and shall be served pursuant to subpart H of this part.

(e) No additional submissions will be permitted unless ordered or requested by the Commission or the presiding officer. If discovery or evidentiary hearing on the petition is deemed necessary by the parties, such must be requested in the petition or replies. Requests shall state in detail the facts to be developed, their relevance to the issues, and why discovery or hearing procedures are necessary to develop such facts.

(f)(1) A notice of filing of any petition which meets the requirements of this section shall be published in the FEDERAL REGISTER. The notice will indicate the time for filing of replies to the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically named persons, opportunity for reply will be given to all interested persons including the Commission's Bureau of Hearing Counsel.

(2) In the case of petitions involving a matter limited to specifically named persons, participation by persons not named therein will be permitted only upon grant of intervention by the Commission pursuant to § 502.72.

(3) Petitions for leave to intervene shall be submitted on or before the reply date and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

(g) Petitions for declaratory order which conform to the requirements of this section will be referred to a formal docket. Referral to a formal docket is not to be construed as the exercise by the Commission of its discretion to issue an order on the merits of the petition. [Rule 68.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.69 Petitions—general and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, including appeals from Commission staff action, except as otherwise provided in this part, shall be by written petition, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provisions or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of subpart H of this part. Replies thereto shall conform to the requirements of § 502.74.

(b) Petitions shall be accompanied by remittance of a $50 filing fee. [Rule 69.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4143, Feb. 10, 1987]

§ 502.70 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleadings will be permitted or rejected, either in the discretion of the Commission if the case has not been assigned to a presiding officer for hearing, or otherwise, in the discretion of the officer designated to conduct the hearing, except that after a case is assigned for hearing, no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment.

(b) A response to an amended pleading must be filed and served in conformity with the requirements of subpart H of this part and § 502.74, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading.

(c) Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement shall also be verified. [Rule 70.]

§ 502.71 Bill of particulars.

Within fifteen (15) days after date of service of the complaint, respondent may file with the Commission and serve upon complainant pursuant to subpart H of this part a motion for a bill of particulars. Within ten (10) days after date of service of such motion, complainant shall file with the Commission and serve upon respondent either (a) the bill of particulars or (b) a reply to such motion, made in conformity with the requirements of § 502.74 setting forth the particular matters contained in the motion which are objected to and the reasons for the objections. If the motion is granted in whole or in part, the order granting same shall specify the date by which the particulars must be furnished. A motion may be filed relative to incomplete compliance with such order. In the event of inexcusable default in furnishing particulars, the party in default shall be precluded from making proof upon the issues with respect to which it has defaulted in furnishing particulars. The time for filing an answer to the complaint shall be extended to a date ten (10) days after the date of service of the bill of particulars or of notice of disallowance of the motion therefor. For good cause shown, motion for a bill of particulars also may be filed after answer is made and within a reasonable time prior to hearing. [Rule 71.]

§ 502.72 Petition for leave to intervene.

(a) A petition for leave to intervene may be filed in any proceeding and shall be served on existing parties by the petitioner pursuant to subpart H of this part. An additional fifteen (15) copies of the petition shall be filed with the Secretary for the use of the Commission. Upon request, the Commission will furnish a service list to any member of the public pursuant to Part 503 of this chapter. The petition shall set forth the grounds for the proposed intervention and the interest and position of the petitioner in the proceeding and shall comply with the other applicable provisions of subpart H of this part, and if affirmative relief is sought, the basis for such relief. Such petition shall also indicate the nature and extent of the participation sought, e.g., the use of discovery, presentation of evidence and examination of witnesses.

(b)(1) Petitions for leave to intervene as a matter of right will only be granted upon a clear and convincing showing that:

(i) The petitioner has a substantial interest relating to the matter which is the subject of the proceeding warranting intervention; and

(ii) The proceeding may, as a practical matter, materially affect the petitioner's interest; and

(iii) The interest is not adequately represented by existing parties to the proceeding.

(2) Petitions for intervention as a matter of Commission discretion may be granted only upon a showing that:

(i) A common issue of law or fact exists between the petitioner's interests and the subject matter of the proceeding; and

(ii) Petitioner's intervention will not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights of or be duplicative of positions of any existing party; and

(iii) The petitioner's participation may reasonably be expected to assist in the development of a sound record.

(3) The timeliness of the petition will also be considered in determining whether a petition will be granted under paragraphs (b)(1) or (b)(2) of this section. If filed after hearings have been closed, a petition will not ordinarily be granted.

(c) In the interests of: (1) Restricting irrelevant, duplicative, or repetitive discovery, evidence or arguments; (2) having common interests represented by a spokesperson; and (3) retaining authority to determine priorities and control the course of the proceeding, the presiding officer, in his or her discretion, may impose reasonable limitations on an intervenor's participation, e.g., the filing of briefs, presentation of evidence on selected factual issues, or oral argument on some or all of the issues.

(d) Absent good cause shown, any intervenor desiring to utilize the procedures provided by subpart L must commence doing so no later than fifteen (15) days after its petition for leave to intervene has been granted. If the petition is filed later than thirty (30) days after the date of publication in the FEDERAL REGISTER of the Commission's Order instituting the proceeding or notice of complaint filed, petitioner will be deemed to have waived its right to utilize such procedures, unless good cause is shown for the failure to file the petition within the 30-day period. The use of subpart L procedures by an intervenor whose petition was filed beyond such 30-day period will in no event be allowed, if, in the opinion of the presiding officer, such use will result in delaying the proceeding unduly.

(e) If intervention is granted before or at a prehearing conference convened for the purpose of considering matters relating to discovery, the intervenor's discovery matters may also be considered at that time, and may be limited under the provisions of paragraph (c) of this section.

(f) A form of petition for leave to intervene is set forth in Exhibit No. 3 to this subpart. [Rule 72.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4143, Feb. 10, 1987]

§ 502.73 Motions.

(a) In any docketed proceeding, an application or request for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions shall be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter shall be referred to the Commission. If the proceeding is not before the presiding officer, motions shall be designated as "petitions" and shall be addressed to and passed upon by the Commission.

(b) Motions shall be in writing, except that a motion made at a hearing shall be sufficient if stated orally upon the record, unless the presiding officer directs that it be reduced to writing.

(c) All written motions shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested; and shall conform with the requirements of subpart H of this part.

(d) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission, as the case may be.

(e) A repetitious motion will not be entertained. [Rule 73.]

§ 502.74 Replies to pleadings, motions, applications, etc.

(a)(1) Except as provided under subpart V of this part, a reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), replies to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after the date of service thereof, unless a shorter period is fixed under § 502.103.

(b) When time permits, replies also may be filed to protests seeking suspension of tariffs (§ 502.67), applications for enlargement of time and postponement of hearing (subpart G of this part), and motions to take depositions (§ 502.201).

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as to fully and completely advise the parties and the Commission as to the nature of the defense, shall admit or deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of subpart H of this part. [Rule 74.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 28264, July 29, 1987]

§ 502.75 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under the fifth paragraph of section 15 of the Shipping Act, 1916, or section 5(d) of the Shipping Act of 1984, the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date will be not more than eight months from the date the complaint was filed.

(b) Any party to a proceeding conducted under this section who desires to utilize the prehearing discovery procedures provided by subpart L of this part shall commence doing so at the time it files its initial pleading, i.e., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113. Answers or objections to discovery requests shall be subject to the normal provisions set forth in subpart L.

(c) Exceptions to the decision of the presiding officer, filed pursuant to § 502.227, shall be filed and served no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be filed and served no later than fifteen (15) days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within thirty (30) days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in § 502.227. [Rule 75.]

§ 502.76 Brief of an amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of the Commission or the presiding officer granted on motion with notice to the parties, or at the request of the Commission or the presiding officer, except that leave shall not be required when the brief is presented by the United States or any agency or officer of the United States. The brief may be conditionally filed with the motion for leave. A brief of an amicus curiae shall be limited to questions of law or policy.

(b) A motion for leave to file an amicus brief shall identify the interest of the applicant and shall state the reasons why such a brief is desirable.

(c) Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support. The Commisson or the presiding officer shall grant leave for a later filing only for cause shown, in which event the period within which an opposing party may answer shall be specified.

(d) A motion of an amicus curiae to participate in oral argument will be granted only in accordance with the requirements of § 502.241. [Rule 76.]

[52 FR 4143, Feb. 10, 1987]

EXHIBIT NO. 1 TO SUBPART E [§ 502.62]—COMPLAINT FORM AND INFORMATION CHECKLIST

Before the Federal Maritime Commission

Complaint

———— v. ———— [Insert without abbreviation exact and complete name of party or parties respondent]

I. The complainant is [State in this paragraph whether complainant is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

II. The respondent is [State in this paragraph whether respondent is an association, a corporation, firm, or partnership and the names of the individuals composing the same. State also the nature and principal place of business].

III. Allegation of jurisdiction. [State in this paragraph a synopsis of the statutory bases for claim(s)].

IV. That [State in this or subsequent paragraphs to be lettered "A", "B", etc., the matter or matters complained of. If rates are involved, name each rate, fare, charge, classification, regulation, or practice, the lawfulness of which is challenged].

V. That by reason of the facts stated in the foregoing paragraphs, complainant has been (and is being) subject to injury as a direct result of the violations by respondent of sections ——— [State in this paragraph the causal connection between the alleged illegal acts of respondent and the claimed injury to complainant, with all necessary statutory sections relied upon].

VI. That complainant has been injured in the following manner: To its damage in the sum of $———.

VII. Wherefore complainant prays that respondent be required to answer the charges herein; that after due hearing, an order be made commanding said respondent (and each of them): to cease and desist from the aforesaid violations of said act(s); to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to said complainant by way of reparations for the unlawful conduct hereinabove described the sum of $———, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission determines to be proper in the premises.

Dated at ——, this —— day of ——, 19—.

[Complainant's signature]

[Office and post office address]

[Signature or agent or attorney of complainant]

[Post office address]

Verification [See § 502.112]

State of ——, County of ——, ss: ——, —— being first duly sworn on oath deposes and says that he (she) is

[The complainant, or, if a firm, association, or corporation, state the capacity of the affiant]

and is the person who signed the foregoing complaint; that he (she) has read the complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of ——, County of —— this —— day ——, A.D. 19—.

[Seal] ——

(Notary Public)

My Commission expires ——.

Information To Assist in Filing Formal Complaint

General

Formal Docket Complaint procedures usually involve an evidentiary hearing on disputed facts. Where no evidentiary hearing on disputed facts is necessary and where all parties agree to the use of different procedures, a complaint may be processed under subpart K [Shortened Procedure] or subpart S [Informal Docket for a claim of $10,000 or less]. An application for refund or waiver of collection of freight charges due to tariff error should be filed pursuant to § 502.92 and Exhibit No. 1 to subpart F. Consider also the feasibilty of filing a Petition for Declaratory Order under § 502.68.

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of complainant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the complaint must be filed within two (2) years from the time the cause of action accrues and may be brought only against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

Because of the limitation periods, a complaint is deemed to be filed only when it is physically received at the Commission. [See § 502.114]

The format of exhibit No. 1 to subpart E must be followed and a verification must be included. (See §§ 502.21-502.32, 502.62 and 502.112.) The complaint must also fully describe the alleged violations of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result. An original and fifteen copies, plus a further number of copies sufficient for service upon each named respondent must be filed and the Commission will serve the other parties. [*See* §§ 502.113 and 502.118]

In addition to subpart E, some other important rules are: § 502.2 (mailing address; hours); § 502.7 (documents in foreign language); § 502.23 (Notice of Apperance); § 502.41 (parties; how designated); § 502.44 (necessary and proper parties to certain complaint proceedings); and subpart H (form, execution and service of documents).

Checklist of Specific Information

The following checklist sets forth items of information which are pertinent in cases submitted to the Commission pursuant to the regulatory provisions of the shipping statutes. The list is not intended to be inclusive, nor does it indicate all of the essential allegations which may be material in specific cases.

1. Identity of complainant; if an individual, complainant's residence; if a partnership, name of partners, business and principal place thereof; if a corporation, name, state of incorporation, and principal place of business. The same information with respect to respondents, intervenors, or others who become parties is necessary.

2. Description of commodity involved, with port of origin, destination port, weight, consignor and consignee of shipment(s), date shipped from loading port, and date received at discharge port.

3. Rate charged, with tariff authority for same, and any rule or regulation applicable thereto; the charges collected and from whom.

4. Route of shipment, including any transshipment; bill of lading reference.

5. Date of delivery or tender of delivery of each shipment.

6. Where the rate is challenged and comparisons are made with rates on other commodities, the form, packing, density, susceptibility to damage, tendency to contaminate other freight, value, volume of movement, competitive situation, and all matters relating to the cost of loading, unloading, and

otherwise handling of respective commodities.

7. If comparisons are made between the challenged rates and rates on other routes, the allegation showing similarity of service should include at least respective distances, volumes of movement, cost of handling, and competitive conditions.

8. History of rate with reasons for previous increases or decreases of same.

9. When the complaint alleges undue prejudice or preference, the complaint should indicate what manner of undue prejudice or preference is involved, and whether to a particular person, locality, or description of traffic; how the preference or discrimination resulted and the manner in which the respondents are responsible for the same; and how complainant is damaged by the prejudice or preference, in loss of sales or otherwise.

10. Care should be exercised to differentiate between the measure of damages required in cases where prejudice or preference is charged, where the illegality of rates is charged and other situations.

11. Where a filed agreement or conduct under the agreement is challenged, all necessary provisions of the shipping statute involved must be specifically cited, showing in detail how a section was violated and how the conduct or agreement injures complainant. The complaint should be thorough and clear as to all relief complainant is requesting.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990]

EXHIBIT NO. 2 TO SUBPART E [§ 502.64]—ANSWER TO COMPLAINT

Before the Federal Maritime Commission

Answer

——— v. ———

[Complainant] [Respondent]

Docket No. ———

The above-named respondent, for answer to the complaint in this proceeding, states:

I. [State in this and subsequent paragraphs to be numbered II, III, etc., appropriate and responsive admissions, denials, and averments, specifically answering the complaint, paragraph by paragraph.]

Wherefore respondent prays that the complaint in this proceeding be dismissed.

———

[Name of respondent]

By ———

[Title of Officer]

———

[Office and post office address]

———

[Signature of attorney or agent]

———

[Post office address]

Date ———, 19-.

Verification

[See form for verification of complaint in Exhibit No. 1 to this subpart and § 502.112.]

Certificate of Service

[See § 502.114.]

EXHIBIT NO. 3 TO SUBPART E [§ 502.72]—PETITION FOR LEAVE TO INTERVENE

Before the Federal Maritime Commission

Petition for Leave To Intervene

——— v. ——— Docket No. ———.

Your petitioner, ———, respectfully represents that he (she) has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is [State whether an association, corporation, firm, or partnership, etc., as in Exhibit No. 1 to this subpart, and nature and principal place of business].

II. [Here set out specifically position and interest of petitioner in the above-entitled proceeding and other essential averments in accordance with Rule 72 (46 CFR 502.72).]

Wherefore said ——— requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought, insert appropriate request here.]

Dated at ———, this ——— day of ———, 19—.

———

Petitioner's signature]

———

[Office and post office address]

———

[Signature of agent or attorney of petitioner]

———

[Post office address]

Verification and Certificate of Service

[See Exhibits Nos. 1 and 2 to this subpart.]

Subpart F—Settlement; Prehearing Procedure

§ 502.91 Opportunity for informal settlement.

(a) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(b) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91.]

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier or a shipper may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(ii) The application for refund or waiver must be accompanied by remittance of a $25 filing fee.

(iii) Date of shipment shall mean the date of sailing of the vessel from the port at which the cargo was loaded.

(4) By filing, the applicant(s) agrees that:

(i) If permission is granted by the Commission:

(A) An appropriate notice will be published in the tariff; or

(B) Other steps will be taken as the Commission may require which give notice of the rate on which such refund or waiver would be based; and

(C) Additional refunds or waivers shall be made with respect to other shipments in the manner prescribed by the Commission's order approving the application.

(ii) If the application is denied, other steps will be taken as the Commission may require.

(5) Application for refund or waiver shall be made in accordance with Exhibit No. 1 to this subpart. Any application which does not furnish the information required by the prescribed form or otherwise comply with this rule may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(b) Common carriers by water in interstate or intercoastal commerce, or conferences of such carriers, may file application for permission to refund a portion of freight charges collected from a shipper or waive collection of a portion of freight charges from a shipper. All such applications shall be filed within the 2-year statutory period referred to in § 502.63, and shall be made in accordance with Exhibit No. 1 to this subpart. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment or waiver will be issued by the Commission.

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573-0001. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding Administrative Law Judge may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. The presiding Administrative Law Judge shall issue an initial decision to which the provisions of § 502.227 shall be applicable. If the application is granted, the initial decision or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

[49 FR 44369, Nov. 6, 1984, as amended at 53 FR 27861, July 25, 1988]

§ 502.93 Satisfaction of complaint.

If a respondent satisfies a complaint either before its answer thereto is due or after answering, a statement to that effect, setting forth when and how the complaint has been satisfied and signed and verified by the opposing parties shall be filed with the Commission and served upon all parties of record. Such a statement, which may be by letter, shall show the amount of reparation agreed upon; shall contain the data called for by Exhibit No. 1 to subpart D, insofar as said form is applicable; and shall state that a like adjustment has been or will be made by respondent with other persons similarly situated. Satisfied complaints will be dismissed in the discretion of the Commission. [Rule 93.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.94 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(iv) Limitation on the number of witnesses;

(v) The procedure at the hearing;

(vi) The distribution to the parties prior to the hearing of written testimony and exhibits;

(vii) Consolidation of the examination of witnesses by counsel;

(viii) Such other matters as may aid in the disposition of the proceeding.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The presiding officer shall rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may petition for a further ruling thereon within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer may call the parties together for an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section. [Rule 94.]

§ 502.95 Prehearing statements.

(a) Unless waiver is granted by the presiding officer, it shall be the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

(1) Issues involved in the proceeding.

(2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.

(3) Facts in dispute.

(4) Witnesses and exhibits by which disputed facts will be litigated.

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

(7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 95.]

EXHIBIT NO. 1 TO SUBPART F

[§ 502.92]

APPLICATION FOR REFUND OF OR WAIVER FOR FREIGHT CHARGES DUE TO TARIFF ERROR

Federal Maritime Commission Special Docket No. ——

Amount of Freight Charges involved in request ——

Application of [Name of carrier, or (if under the 1984 Act) shipper] for the benefit of [Name of person who paid or is responsible for payment of freight charges].

1. *Shipment(s).* Here fully describe:

(a) Commodity [according to tariff description].

(b) Number of shipments.

(c) Weight or measurement of individual shipment, as well as, all shipments.

(d) Date(s) of shipment(s), i.e., sailing(s) [furnish supporting evidence].

(e) Shipper and place of origin.

(f) Consignee, place of destination and routing of shipment(s).

(g) Name of carrier and date shown on bill of lading [furnish legible copies of bill(s) of lading].

(h) Names of participating ocean carrier(s).

(i) Name(s) of vessel(s) involved in carriage.

(j) Amount of freight charges actually collected [furnish legible copies of rated bill(s) of lading or freight bill(s), as appropriate] broken down (i) per shipment, (ii) in the aggregate, (iii) by whom paid, (iv) who is responsible for payment if different, and (v) date(s) of collection.

(k) Rate applicable at time of shipment [furnish legible copies of tariff page(s)].

(l) Rate sought to be applied [furnish legible copies of tariff page(s)].

(m) Amount of freight charges at rate sought to be applied, per shipment and in the aggregate.

(n) Amount of freight charges sought to be (refunded) (waived), per shipment and in the aggregate.

2. Furnish docket numbers of other special docket applications or decided or pending formal proceedings involving the same rate situations.

3. Furnish any information or evidence as to whether grant of the application will result in discrimination among shippers, ports or carriers.

4. State whether there are shipments of other shippers of the same commodity which (i) moved via the carrier(s) or conference involved in this application during the

period of time beginning on the date the tariff omitting the intended rate become effective or on the date the intended rate absent the mistake would have became effective and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above.

5. Fully explain the basis for the application, i.e., the clerical or administrative error or error due to inadvertence, or reasons why freight charges collected are thought to be unlawful (domestic commerce) showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to inadvertence, specify the date when the carrier and/or conference intended or agreed to file a new tariff.

[Here set forth Name of Applicant, Signature of Authorized Person, Typed or Printed Name of Person, Title of Person and Date]

State of ———, County of ———. ss:

I, ———, on oath declare that I am ——— of the above-named applicant, that I have read this application and know its contents, and that they are true.

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this ——— day of ———, A.D. 19—.

(Seal) ———————————

Notary Public

My Commission expires ———.

Affidavit of Carrier(s)

[Here, as applicable, set forth same type of affidavit(s) and notarization(s) as set forth on page 2 of this exhibit for carrier, for any other water carrier participating in the transportation under a joint through rate.]

Certificate of Mailing

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and three (3) copies of this application to the Secretary, Federal Maritime Commission, Washington, D.C., 20573.

Dated at ———, this ——— day of ———, 19—.

[Signature] ———————————.

For ———.

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4144, Feb. 10, 1987; 53 FR 27861, July 25, 1988]

Subpart G—Time

§ 502.101 Computation.

In computing any period of time under the rules in this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or national legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or national legal holidays shall be excluded from the computation. [Rule 101.]

§ 502.102 Enlargement of time to file documents.

Motions for enlargement of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, shall set forth the reasons for the motion. Such motions will be granted only under exceptional circumstances duly demonstrated in the request. Such motions shall conform to the requirements of subpart H of this part, except as to service if they show that the parties have received actual notice of the motion; and in relation to briefs, exceptions, and replies to exceptions, such motions shall conform to the further provisions of §§ 502.222 and 502.227. Upon motion made after the expiration of the specified period, the filing may be permitted where reasonable grounds are found for the failure to file. Replies to such motions shall conform to the requirements of § 502.74. [Rule 102.]

§ 502.103 Reduction of time to file documents.

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him or her, may reduce any time limit prescribed in the rules in this part. [Rule 103.]

§ 502.104 Postponement of hearing.

Motions for postponement of any hearing date shall set forth the reasons for the motion, and shall conform to the requirements of subpart H of this part, except as to service if they show that parties have received such actual notice of motion. Such motions will be granted only if found necessary to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party. Replies to such motions shall conform to the requirements of § 502.74. [Rule 104.]

§ 502.105 Waiver of rules governing enlargements of time and postponements of hearings.

The Commission, the presiding officer, or the Chief Administrative Law Judge may waive the requirements of §§ 502.102 and 502.104, as to replies to pleadings, etc., to motions for enlargement of time or motions to postpone a hearing, and may rule ex parte on such requests. Requests for enlargement of time or motions to postpone or cancel a prehearing conference or hearing must be received, whether orally or in writing, at least five (5) days before the scheduled date. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. [Rule 105.]

Subpart H—Form, Execution, and Service of Documents

§ 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part may be reproduced by printing or by any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than small pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. [Rule 111.]

(b) Filings by facsimile will not be accepted, except for the purpose of meeting filing deadlines of protests filed pursuant to § 502.67 or replies thereto, in which case the original and required copies must also be certified as being deposited in the mail or delivered to a courier on or before the deadline. Photocopies of facsimile transmissions of signature pages on other filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original within seven working days. Use of photocopies of facsimile transmissions in exhibits to part 502 filings is permitted.

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.112 Subscription and verification of documents.

(a) If a party is represented by an attorney or other person qualified to practice before the Commission under the rules in this part, each pleading, document or other paper of such party filed with the Commission shall be signed by at least one person of record admitted to practice before the Commission in his or her individual name, whose address shall be stated. Except when otherwise specifically provided by rule or statute, such pleading, document or paper need not be verified or accompanied by affidavit. The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by him or her that he or she has read the pleading, document or paper; that he or she is authorized to file it; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. For a willful violation of this section, a person admitted or qualified to practice before the Commission may be subjected to appropriate disciplinary action.

(b) If a party is not represented by a person admitted or qualified to practice before the Commission, each pleading, document or other paper of such party filed with the Commission shall be signed and verified under oath by the party or by a duly authorized officer or agent of the party, whose address and title shall be stated. The form of verification shall be substantially as set forth in Exhibit No. 1 to Subpart E. Where the signature is that of an officer or agent (unless, in the case of a corporate party, it is signed by the president or a vice president and attested by the secretary or an assistant secretary under the seal of the corporation), there shall be filed with the Commission an original or certified copy of the power of attorney or other document authorizing the person to sign. [Rule 112.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.113 Service by the Commission.

Complaints filed pursuant to § 502.62, amendments to complaints, and complainant's memoranda filed in shortened procedure cases will be served by the Commission. In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding. [Rule 113.]

§ 502.114 Service and filing by parties.

(a) Except as otherwise specifically provided by the rules in this part, all pleadings, documents, and papers of every kind (except requests for subpenas) in proceedings before the Commission under the rules in this part (other than documents served by the Commission under § 502.113 and documents submitted at a hearing or prehearing conference) shall, when tendered to the Commission or the presiding officer for filing, show that service has been made upon all parties to the proceeding and upon any other persons required by the rules in this part to be served. Such service shall be made by delivering one copy to each party: by hand delivering in person; by mail, properly addressed with postage prepaid; or by courier.

(b) Service on all prior participants shall be shown when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings and replies such as petitions for reconsideration, or for stay under rule 261 or to reopen under rule 230 in all general notice proceedings, including those involving disposition of petitions for rulemaking (rule 51), petitions for declaratory order (rule 68), petitions general (rule 69), notices of proposed rulemaking (rule 53), proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5) (part 587). A list of all participants may be obtained from the Secretary of the Commission.

(c) Except with respect to filing of complaints pursuant to §§ 502.62 and 502.63, protests pursuant to § 502.67 and claims pursuant to § 502.302, the date of filing shall be either the date on which the pleading, document, or paper is physically lodged with the Commission by a party or the date which a party certifies it to have been deposited in the mail or delivered to a courier. [Rule 114.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.115 Service on attorney or other representative.

When a party has appeared by attorney or other representative, service upon each attorney or other representative of record will be deemed service upon the party, except that, if two or more attorneys of record are partners or associates of the same firm, only one of them need be served. [Rule 115.]

§ 502.116 Date of service.

The date of service of documents served by the Commission shall be the date shown in the service stamp thereon. The date of service of documents served by parties shall be the day when matter served is deposited in the United States mail, delivered to a courier, or is delivered in person, as the case may be. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

§ 502.117 Certificate of service.

The original of every document filed with the Commission and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon [all parties of record or name of person(s)] by [mailing, delivering to courier or delivering in person] a copy to each such person.

Dated at, —— this —— day of —— 19—.

(Signature) ————————————

(For) ————————————

[Rule 117.]

§ 502.118 Copies of documents for use of the Commission.

(a) Except as otherwise provided in the rules in this part, the original and fifteen (15) copies of every document filed and served in proceedings before the Commission shall be furnished for the Commission's use. If a certificate of service accompanied the original document, a copy of such certificate shall be attached to each such copy of the document.

(b) In matters pending before an administrative law judge the following copy requirements apply.

(1) An original and fifteen copies shall be filed with the Secretary of:

(i) Appeals and replies thereto filed pursuant to § 502.153;

(ii) Memoranda submitted under shortened procedures of Subpart K of this part;

(iii) Briefs submitted pursuant to § 502.221;

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule either directly or upon review of the administrative law judge's disposition thereof, pursuant to § 502.227;

(v) Answers to complaints filed pursuant to § 502.64.

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

(3)(i) A single copy shall be filed with the Secretary of requests for discovery, answers, or objections exchanged among the parties under procedures of Subpart L of this part. Such materials will not be part of the record for decision unless admitted by the presiding officer or Commission.

(ii) Motions filed pursuant to § 502.201 are governed by the requirements of paragraph (b)(2) of this section and motions involving persons and documents located in a foreign country are governed by the requirements of paragraph (b)(1)(iv) of this section.

(4) One copy of each exhibit shall be furnished to the official reporter, to each of the parties present at the hearing and to the Presiding Officer unless he or she directs otherwise. If submitted other than at a hearing, the "reporter's" copy of an exhibit shall be furnished to the administrative law judge for later inclusion in the record if and when admitted.

(5) Copies of prepared testimony submitted pursuant to §§ 502.67(d) and 502.157 are governed by the requirements for exhibits in paragraph (b)(4) of this section. [Rule 118.]

[49 FR 44369, Nov. 6, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 502.119 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings which contain information previously designated as confidential pursuant to §§ 502.167, 502.201(i)(1)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i)(1)(vii) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as confidential and describes the nature and extent of the authority for requesting confidential treatment.

(b) Such filings shall consist of public and confidential copies. The public copies shall exclude confidential materials and shall indicate on the cover page and on each affected page "confidential materials excluded." The confidential copies shall consist of the complete filing and shall include a cover page marked "confidential-restricted," with the confidential materials likewise clearly marked on each page.

(c) Confidential treatment afforded by this section is subject to the proviso that any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 119.]

[55 FR 28400, July 11, 1990]

Subpart I—Subpenas

§ 502.131 Requests; issuance.

Subpenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpenas for the attendance of witnesses may be made orally or in writing; requests for subpenas for the production of evidence shall be in writing. The party requesting the subpena shall tender to the presiding officer an original and at least two copies of such subpena. Where it appears to the presiding officer that the subpena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may in his or her discretion, as a condition precedent to the issuance of the subpena, require the person seeking the subpena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

§ 502.132 Motions to quash or modify.

(a) Except when issued at a hearing, or in connection with the taking of a deposition, within ten (10) days after service of a subpena for attendance of a witness or a subpena for production of evidence, but in any event at or before the time specified in the subpena for compliance therewith, the person to whom the subpena is directed may, by motion with notice to the party requesting the subpena, petition the presiding officer to quash or modify the subpena.

(b) If served at the hearing, the person to whom the subpena is directed may, by oral application at the hearing, within a reasonable time fixed by the presiding officer, petition the presiding officer to revoke or modify the subpena.

(c) If served in connection with the taking of a deposition pursuant to § 502.203 unless otherwise agreed to by all parties or otherwise ordered by the presiding officer, the party who has requested the subpena shall arrange that it be served at least twenty (20) days prior to the date specified in the subpena for compliance therewith, the person to whom the subpena is directed may move to quash or modify the subpena within ten (10) days after service of the subpena, and a reply to such motion shall be served within five (5) days thereafter. [Rule 132.]

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpena to a hearing are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.134 Service of subpenas.

If service of a subpena is made by a United States marshal, or his or her deputy, or an employee of the Commission, such service shall be evidenced by his or her return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. In making service, the original subpena shall be exhibited to the person served, shall be read to him or her if he or she is unable to read, and a copy thereof shall be left with him or her. The original subpena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear. [Rule 134.]

§ 502.135 Subpena of Commission staff personnel, documents or things.

(a) A subpena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If the subpena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission, on its own motion, reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 135.]

§ 502.136 Enforcement.

In the event of failure to comply with any subpena or order issued in connection therewith, the Commission may seek enforcement as provided in § 502.210(b). [Rule 136.]

Subpart J—Hearings; Presiding Officers; Evidence

§ 502.141 Hearings not required by statute.

The Commission may call informal public hearings, not required by statute, to be conducted under the rules in this part where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence to the extent permitted by law. [Rule 141.]

§ 502.142 Hearings required by statute.

In complaint and answer cases, investigations on the Commission's own motion, and in other rulemaking and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to 5 U.S.C. 554. [Rule 142.]

§ 502.143 Notice of nature of hearing, jurisdiction and issues.

Persons entitled to notice of hearings, except those notified by complaint served under § 502.133, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. [Rule 143.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.144 Notice of time and place of hearing.

Notice of hearing will designate the time and place thereof, the person or persons who will preside, and the kind of decision to be issued. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place of the change thereof, due regard being had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail or telegraph. [Rule 144.]

§ 502.145 Presiding officer.

(a) Definition. *Presiding officer* includes, where applicable, a member of the Commission or an administrative law judge. (See § 502.25.)

(b) *Designation of administrative law judge.* An administrative law judge will be designated by the Chief of the Commission's Office of Administrative Law Judges to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one or more members thereof shall preside, and will also preside at hearings not required by statute when designated to do so by the Commission.

(c) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable to the Commission, the Commission, or Chief Judge (if such presiding officer was an administrative law judge), shall designate a qualified officer to take his or her place. Any motion predicated upon the substitution of a new presiding officer for one originally designated shall be made within ten (10) days after notice of such substitution. [Rule 145.]

§ 502.146 Commencement of functions of Office of Administrative Law Judges.

In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62; or

(b) Upon reference by the Commission of a petition for a declaratory order pursuant to § 502.68; or

(c) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.92; or

(d) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge. [Rule 146.]

§ 502.147 Functions and powers.

(a) *Of presiding officer.* The officer designated to hear a case shall have authority to arrange and give notice of hearing; sign and issue subpenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order, except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933; hold conferences for the settlement or simplification of issues by consent of the parties; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and receive relevant material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, arguments, offers of settlement, and proposals of adjustment; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part; act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding officer or the Commission may exclude any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) All of the functions delegated in Subparts A to Q of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.148 Consolidation of proceedings.

The Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together. [Rule 148.]

§ 502.149 Disqualification of presiding or participating officer.

Any presiding or participating officer may at any time withdraw if he or she deems himself or herself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding, or its representative, files a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case. [Rule 149.]

§ 502.150 Further evidence required by presiding officer during hearing.

At any time during the hearing, the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties concerned, either at the hearing or adjournment thereof. [Rule 150.]

§ 502.151 Exceptions to rulings of presiding officer unnecessary.

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which it desires the presiding officer to take or its objection to an action taken, and its grounds therefor. [Rule 151.]

§ 502.152 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. [Rule 152.]

§ 502.153 Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.

(a) Rulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer shall find it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party.

(b) Any party seeking to appeal must file a motion for leave to appeal no later than fifteen (15) days after written service or oral notice of the ruling in question, unless the presiding officer, for good cause shown, enlarges or shortens the time. Any such motion shall contain not only the grounds for leave to appeal but the appeal itself.

(c) Replies to the motion for leave to appeal and the appeal may be filed within fifteen (15) days after date of service thereof, unless the presiding officer, for good cause shown, enlarges or shortens the time. If the motion is granted, the presiding officer shall certify the appeal to the Commission.

(d) Unless otherwise provided, the certification of the appeal shall not operate as a stay of the proceeding before the presiding officer.

(e) The provisions of § 502.10 shall not apply to this section. [Rule 153.]

§ 502.154 Rights of parties as to presentation of evidence.

Every party shall have the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The presiding officer shall, however, have the right and duty to limit the introduction of evidence and the examination and cross-examination of witnesses when in his or her judgment, such evidence or examination is cumulative or is productive of undue delay in the conduct of the hearing. [Rule 154.]

§ 502.155 Burden of proof.

At any hearing in a suspension proceeding under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the suspended rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order. [Rule 155.]

§ 502.156 Evidence admissible.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. Unless inconsistent with the requirements of the Administrative Procedure Act and these Rules, the Federal Rules of Evidence, Pub. L. 93-595, effective July 1, 1975, will also be applicable. [Rule 156.]

§ 502.157 Written evidence.

(a) The use of written statements in lieu of oral testimony shall be resorted to where the presiding officer in his or her discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in its rebuttal shall be required to list the paragraphs to which it objects, giving an indication of its reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The presiding officer shall fix respective dates for the exchange of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter, the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified, except that such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination. [Rule 157.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.158 Documents containing matter not material.

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant. [Rule 158.]

§ 502.159 [Reserved]

§ 502.160 Records in other proceedings.

When any portion of the record before the Commission in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference. [Rule 160.]

§ 502.161 Commission's files.

Where any matter contained in a tariff, report, or other document on file with the Commission is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number of tariff, report, or document in such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file. [Rule 161.]

§ 502.162 Stipulations.

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Writen stipulations shall be subscribed and shall be served upon all parties of record unless presented at the hearing or prehearing conference. A stipulation may be proposed even if not subscribed by all parties without prejudice to any nonsubscribing party's right to cross-examine and offer rebuttal evidence. [Rule 162.]

§ 502.163 Receipt of documents after hearing.

Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by a statement that copies have been served upon all parties, and shall be received, except for good cause shown, not later than ten (10) days after the close of the hearing and not less than (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. [Rule 163.]

§ 502.164 Oral argument at hearings.

Oral argument at the close of testimony may be ordered by the presiding officer in his or her discretion. [Rule 164.]

§ 502.165 Official transcript.

(a) The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b)(1) Section 11 of the Federal Advisory Committee Act provides that, except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings. As used in this section, "agency proceeding" means any proceeding as defined in 5 U.S.C. 551(12).

(2) The Office of Management and Budget has interpreted this provision as being applicable to proceedings before the Commission and its administrative law judges. (Guidelines, 38 FR 12851, May 16, 1973.)

(3) The Commission interprets section 11 and the OMB guidelines as follows:

(i) Future contracts between the Commission and the successfully bidding recording firm will provide that any party to a Commission proceeding or other interested person (hereinafter included within the meaning of "party") shall be able to obtain a copy of the transcript of the proceeding in which it is involved at the actual cost of duplication of the original transcript, which includes a reasonable amount for overhead and profit, except where it requests delivery of copies in a shorter period of time than is required for delivery by the Commission.

(ii) The Commission will bear the full expense of transcribing all of its administrative proceedings where it requests regular delivery service (as set forth in the Contract). In cases where the Commission requests daily delivery of transcript copies (as set forth in the Contract), any party may receive daily delivery service at the actual cost of duplication.

(iii)(A) Where the Commission does not request daily copy service, any party requesting such service must bear the incremental cost of transcription above the regular copy transcription cost borne by the Commission, in addition to the actual cost of duplication, except that where the party applies for and properly shows that the furnishing of daily copy is indispensible to the protection of a vital right or interest in achieving a fair hearing, the presiding officer in the proceeding in which the application is made shall order that daily copy service be provided the applying party at the actual cost of duplication, with the full cost of transcription being borne by the Commission.

(B) In the event a request for daily copy is denied by the presiding officer, the requesting party, in order to obtain daily copy, must pay the cost of transcription over and above that borne by the Commission, i.e., the incremental cost between that paid by the Commission when it requests regular copy and when it requests daily copy.

(C) The decision of the presiding officer in this situation is interpreted as falling within the scope of the functions and powers of the presiding officer, as defined in § 502.147(a). [Rule 165.]

§ 502.166 Corrections of transcript.

Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record shall be filed with the presiding officer within twenty-five (25) days after the last day of hearing or any session thereof, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing. [Rule 166.]

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Copies of said transcript need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. This rule is subject to the proviso that any information given pursuant thereto, may be used by the presiding officer or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 167.]

[55 FR 28400, July 11, 1990]

§ 502.168 Copies of data or evidence.

Every person compelled to submit data or evidence shall be entitled to retain or, on payment of proper costs, procure a copy of transcript thereof. [Rule 168.]

§ 502.169 Record of decision.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. [Rule 169.]

Subpart K—Shortened Procedure

§ 502.181 Selection of cases for shortened procedure; consent required.

By consent of the parties and with approval of the Commission or presiding officer, a complaint proceeding may be conducted under shortened procedure without oral hearing, except that a hearing may be ordered by the presiding officer at the request of any party or in his or her discretion. [Rule 181.]

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

A complaint filed with the Commission under this subpart shall have attached a memorandum of the facts subscribed and verified according to § 502.112, and of arguments separately stated, upon which it relies. The original of each complaint with memorandum shall be accompanied by copies for the Commission's use. The complaint shall be accompanied by remittance of a $50 filing fee. [Rule 182.]

§ 502.183 Respondent's answering memorandum.

Within twenty-five (25) days after date of service of the complaint, unless a shorter period is fixed, each respondent shall, if it consents to the shortened procedure provided in this subpart, serve upon complainant pursuant to subpart H of this part an answering memorandum of the facts, subscribed and verified according to § 502.112, and of arguments, separately stated, upon which it relies. The original of the answering memorandum shall be accompanied by a certificate of service as provided in § 502.114 and shall be accompanied by copies for the Commission's use. If the respondent does not consent to the proceeding being conducted under the shortened procedure provided in this subpart, the matter will be governed by subpart E of this part and the respondent shall file an answer under § 502.64. [Rule 183.]

§ 502.184 Complainant's memorandum in reply.

Within fifteen (15) days after the date of service of the answering memorandum prescribed in § 502.183, unless a shorter period is fixed, each complainant may file a memorandum in reply, subscribed and verified according to § 502.112, served as provided in § 502.114, and accompanied by copies for the Commission's use. This will close the record for decision unless the presiding officer determines that the record is insufficient and orders the submission of additional evidentiary materials. [Rule 184.]

§ 502.185 Service of memoranda upon and by interveners.

Service of all memoranda shall be made upon any interveners. Interveners shall file and serve memoranda in conformity with the provisions relating to the parties on whose behalf they intervene. [Rule 185.]

§ 502.186 Contents of memoranda.

The memorandum should contain concise arguments and fact, the same as would be offered if a formal hearing were held and briefs filed. If reparation is sought, paid freight bills should accompany complainant's original memorandum. [Rule 186.]

§ 502.187 Procedure after filing of memoranda.

An initial, recommended, or tentative decision will be served upon the parties in the same manner as is provided under § 502.225. Thereafter, the procedure will be the same as that in respect to proceedings after formal hearing. [Rule 187.]

Subpart L—Depositions, Written Interrogatories, and Discovery

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under section 22 of the Shipping Act, 1916 and the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

(b) *Schedule of use*—(1) *Complaint proceedings.* Any party desiring to use the procedures provided in this subpart shall commence doing so at the time it files its initial pleading, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113.

(2) *Commission instituted proceedings.* All parties desiring to use the procedures provided in this subpart shall commence to do so within 30 days of the service of the Commission's order initiating the proceeding.

(3) *Commencement of discovery.* The requirement to commence discovery under paragraphs (b)(1) and (b)(2) of this section shall be deemed satisfied when a party serves any discovery request under this subpart upon a party or person from whom a response is

deemed necessary by the party commencing discovery. A schedule for further discovery pursuant to this subpart shall be established at the conference of the parties pursuant to paragraph (d) of this section.

(c) *Completion of discovery.* Discovery shall be completed within 120 days of the service of the complaint or the Commission's order initiating the proceeding.

(d) *Duty of the Parties.* In all proceedings in which the procedures of this subpart are used, it shall be the duty of the parties to meet or confer within fifteen (15) days after service of the answer to a complaint or after service of the discovery requests in a Commission-instituted proceeding in order to: establish a schedule for the completion of discovery within the 120-day period prescribed in paragraph (c) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five (5) days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

(e) *Submission of status reports and requests to alter schedule.* The parties shall submit a status report concerning their progress under the discovery schedule established pursuant to paragraph (d) of this section not later than thirty (30) days after submission of such schedule to the presiding officer and at 30-day intervals thereafter, concluding on the final day of the discovery schedule, unless the presiding officer otherwise directs. Requests to alter such schedule beyond the 120-day period shall set forth clearly and in detail the reasons why the schedule cannot be met. Such requests may be submitted with the status reports unless an event occurs which makes adherence to the schedule appear to be impossible, in which case the requests shall be submitted promptly after occurrence of such event.

(f) *Conferences.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience. When a reporter is not present and oral rulings are made at a conference held pursuant to this paragraph or paragraph (g) of this section, the parties shall submit to the presiding officer as soon as possible but within three (3) work days, unless the presiding officer grants additional time, a joint memorandum setting forth their mutual understanding as to each ruling on which they agree and, as to each ruling on which their understandings differ, the individual understandings of each party. Thereafter, the presiding officer shall issue a written order setting forth such rulings.

(g) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. Such rulings shall be made orally upon the record when feasible and/or by subsequent ruling in writing. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding, the presiding officer may order a hearing to commence before the completion of discovery.

(h) *Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(i) *Protective orders.* (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(v) That discovery may be conducted with no one present except persons designated by the presiding officer;

(vi) That a deposition after being sealed be opened only by order of the presiding officer;

(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, under such other procedure the presiding officer may establish.

(j) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's responses to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement responses with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which such person is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) the party knows that the response was incorrect when made, or (ii) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or by agreement of the parties, subject to the time limitations set forth in paragraph (c) of this section or established under paragraph (e) of this section. [Rule 201.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths under the laws of the United States or of the place where the examination is held.

(b) *In foreign countries.* In a foreign country, depositions may be taken (1) on notice, before a person authorized to administer oaths in the place in which the examination is held, either under the law thereof or under the law of the United States, or (2) before a person commissioned by the Commission, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under the rules in this subpart. (See 22 CFR 92.49—92.66.)

(c) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Waiver of objection.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence

(e) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. [Rule 202.]

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to such person and to every other party to the action, pursuant to Subpart H of this part. The notice shall state the time and place for the taking of the deposition sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also contain a statement of the matters concerning which each witness will testify.

(2) The attendance of witnesses may be compelled by subpena as provided in Subpart I of this part. If a subpena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpena shall be attached to or included in the notice.

(3) All errors and irregularities in the notice or subpena for taking of a deposition are waived unless written objection is promptly served upon the party giving the notice.

(4) Examination and cross-examination of deponents may proceed as permitted at the hearing under the provisions of § 502.154.

(b) *Record of examination; oath; objections.* (1) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in his or her presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Objections shall be resolved at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(2) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(3) The parties may stipulate or the presiding officer may upon motion order that a deposition be taken by telephone or other reliable device.

(c) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in paragraph (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(d) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor, and the deposition may then be used as fully as though signed, unless upon objection, the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(e) *Certification and filing by officer; copies, notice of filing.* (1) The officer taking the deposition shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Secretary of the Commission by hand or registered or certified mail.

(2) Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(f) *Effect of errors and irregularities.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under this section and § 502.204 are waived unless a motion to suppress the deposition or some part thereof is made within ten (10) days of filing. [Rule 203.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.204 Depositions upon written interrogatories.

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party pursuant to Subpart H of this part with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross interrogatories upon the party proposing to take the deposition. All errors and irregularities in the notice are waived unless written objection is promptly served upon the party giving the notice.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by paragraphs (b), (d) and (e) of § 502.203 to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him or her.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties. [Rule 204.]

§ 502.205 Interrogatories to parties.

(a) *Service; answers.* (1) Any party may serve, pursuant to Subpart H of this part, upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Any party desiring to serve interrogatories as provided by this section must comply with the applicable provisions of § 502.201 and make service thereof on all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, on all parties to the proceeding under the schedule established pursuant to § 502.201. The presiding officer, for good cause, may limit service of answers.

(b) *Objections to interrogatories.* All objections to interrogatories shall be resolved at the conference or meeting provided for under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to interrogatories shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed.

(c) *Scope, time, number and use.* (1) Interrogatories may relate to any matters which can be inquired into under § 502.201(h), and the answers may be used to the same extent as provided in § 502.209 for the use of the deposition of a party.

(2) Interrogatories may be sought after interrogatories have been answered, but the presiding officer, on motion of the deponent or the party interrogated, may make such protective order as justice may require.

(3) The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression.

(4) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Rule 205.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.206 Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve, pursuant to Subpart H of this part, on any other party a request (1) to produce and permit the party making the request, or someone acting on its behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, sound or video recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of § 502.203(a) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property of any designated object or operation thereon, within the scope of § 502.203(a).

(b) *Procedure.* The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Responses shall be served under the schedule established pursuant to § 502.201. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. Objections to requests for production of documents shall be resolved at the conference or meeting required under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to requests for production of documents shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed. [Rule 206.]

§ 502.207 Requests for admission.

(a)(1) A party may serve, pursuant to Subpart H of this part, upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of § 502.203(a) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Any party desiring to serve a request as provided by this section must comply with the applicable provisions of § 502.201.

(2)(i) Each matter of which an admission is requested shall be separately set forth.

(ii) The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the presiding officer may allow pursuant to § 502.201, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

(iii) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; a party may, subject to the provisions of § 502.207(c) deny the matter or set forth reasons why it cannot be admitted or denied.

(3) The party who has requested admissions may request rulings on the sufficiency of the answers or objections. Rulings on such requests shall be issued at a conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Unless

the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withdrawal or amendment will be prejudicial in maintaining the party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under paragraph (a) of this section, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that:

(1) The request was held objectionable pursuant to paragraph (a) of this section, or

(2) The admission sought was of no substantial importance, or

(3) The party failing to admit had reasonable ground to believe that it might prevail on the matter, or

(4) There was other good reason for the failure to admit. [Rule 207.]

§ 502.208 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under paragraph (a) of this section shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *General.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contra-

dicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or

(iii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require introduction of all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* (1) Except as otherwise provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(3) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(4) Objections to the form of written interrogatories submitted under § 502.204 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross interrogatories.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person its own witness for any purpose by taking such person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(3) of this section. At the hearing, any party may rebut any relevent evidence contained in a deposition whether introduced by it or by any other party. [Rule 209.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

(a) *Sanctions for failure to comply with order.* If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereto, or rendering a judgement by default against the disobedient party.

(b) *Enforcement of orders and subpenas.* In the event of refusal to obey an order or failure to comply with a subpena, the Attorney General at the request of the Commission, or any party injured thereby may seek enforcement by a United States district court having jurisdiction over the parties. Any action with respect to enforcement of subpenas or orders relating to depositions, written interrogatories, or other discovery matters shall be taken within twenty (20) days of the date of refusal to obey or failure to comply. A private party shall advise the Commission five (5) days (excluding Saturdays, Sundays and legal holidays) before applying to the court of its intent to seek enforcement of such supenas and discovery orders.

(c) *Persons and documents located in a foreign country.* Orders of the presiding officer directed to persons or documents located in a foreign country shall become final orders of the Commission unless an appeal to the Commission is filed within ten (10) days after date of issuance of such orders or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no orders of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 210.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart M—Briefs; Requests for Findings; Decisions; Exceptions

§ 502.221 Briefs; requests for findings.

(a) The presiding officer shall fix the time and manner of filing briefs and any enlargement of time. The period of time allowed shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise.

(b) Briefs shall be served upon all parties pursuant to Subpart H of this part.

(c) In investigations instituted on the Commission's own motion, the presiding officer may require Hearing Counsel to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of Subpart H of this part.

(d) Unless otherwise ordered by the presiding officer, opening or initial briefs shall contain the following matters in separately captioned sections: (1) Introductory section describing the nature and background of the case, (2) proposed findings of fact in serially numbered paragraphs with reference to exhibit numbers and pages of the transcript, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

(e) All briefs shall contain a subject index or table of contents with page references and a list of authorities cited.

(f) The presiding officer may limit the number of pages to be contained in a brief. [Rule 221.]

§ 502.222 Requests for enlargement of time for filing briefs.

Requests for enlargement of time within which to file briefs shall conform to the requirements of § 502.102. Except for good cause shown, such requests shall be filed and served pursuant to Subpart H of this part not later than five (5) days before the expiration of the time fixed for the filing of the briefs. [Rule 222.]

§ 502.223 Decisions—administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decisions. [Rule 223.]

§ 502.224 Separation of functions.

The separation of functions as required by 5 U.S.C. 554(d) shall be observed in proceedings under Subparts A to Q inclusive, of this part. [Rule 224.]

§ 502.225 Decisions—contents and service.

All initial, recommended, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision. This provision shall also apply to decisions issued pursuant to Subpart T of this part. [Rule 225.]

§ 502.226 Decision based on official notice; public documents.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(b) Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a state or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or relevant part thereof. [Rule 226.]

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

(a)(1) Within twenty-two (22) days after date of service of the initial decision, unless a shorter period is fixed under § 502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate transcript page and exhibit number when referring to the record, and shall be served on all parties pursuant to Subpart H of this part.

(2) Any adverse party may file and serve a reply to such exceptions within twenty-two (22) days after the date of service thereof, which shall contain appropriate transcript and exhibit references.

(3) Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission thirty (30) days after date of service thereof (and the Secretary shall so

notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative.

(4) Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter.

(5) Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties.

(6) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under §§ 502.67 and 502.75.

(b)(1) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question.

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within fifteen (15) days after the date the appeal is served.

(3) The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission thirty (30) days after date of service of such order (and the Secretary shall so notify the parties), unless within such 30-day period the Commission decides to review such order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 227.]

§ 502.228 Request for enlargement of time for filing exceptions and replies thereto.

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 502.102. Requests for extensions of these periods will be granted only under exceptional circumstances duly demonstrated in the request. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents. Any enlargement of time granted will automatically extend by the same period the date for the filing of notice or review by the Commission. [Rule 228.]

§ 502.229 Certification of record by presiding or other officer.

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision. [Rule 229.]

§ 502.230 Reopening by presiding officer or Commission.

(a) *Motion to reopen.* At any time after the conclusion of a hearing in a proceeding, but before issuance by the presiding officer of a recommended or initial decision, any party to the proceeding may file with the presiding officer a motion to reopen the proceeding for the purpose of receiving additional evidence. A motion to reopen shall be served in conformity with the requirements of Subpart H and shall set forth the grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(c) *Reopening by presiding officer.* At any time prior to filing his or her decision, the presiding officer upon his or her own motion may reopen a proceeding for the reception of further evidence.

(d) *Reopening by the Commission.* Where a decision has been issued by the presiding officer or where a decision by the presiding officer has been omitted, but before issuance of a Commission decision, the Commission may, after petition and reply in conformity with paragraphs (a) and (b) of this section, or upon its own motion, reopen a proceeding for the purpose of taking further evidence.

(e) *Remand by the Commission.* Nothing contained in this rule shall preclude the Commission from remanding a proceeding to the presiding officer for the taking of additional evidence or determining points of law. [Rule 230.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart N—Oral Argument; Submission for Final Decision

§ 502.241 Oral argument.

(a) The Commission may hear oral argument either on its own motion or upon the written request of a party. If oral argument before the Commission is desired on exceptions to an initial or recommended decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such a request irrespective of its filing exceptions under § 502.227. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition, or application, or in the reply thereto. If the Commission determines to hear oral argument, a notice will be issued setting forth the order of presentation and the amount of time allotted to each party.

(b)(1) Requests for oral argument will be granted or denied in the discretion of the Commission.

(2) Parties requesting oral argument shall set forth the specific issues they propose to address at oral argument.

(c) Those who appear before the Commission for oral argument shall confine their argument to points of controlling importance raised on exceptions or replies thereto. Where the facts of a case are adequately and accurately dealt with in the initial or recommended decision, parties should, as far as possible, address themselves in argument to the conclusions.

(d) Effort should be made by parties taking the same position to agree in advance of the argument upon those persons who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Commission not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted. [Rule 241.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 4144, Feb. 10, 1987]

§ 502.242 Submission to Commission for final decision.

A proceeding will be deemed submitted to the Commission for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Commission's intention to review the decision, if such notice is given. [Rule 242.]

§ 502.243 Participation of absent Commissioner.

Any Commissioner who is not present at oral argument and who is otherwise authorized to participate in a decision shall participate in making that decision after reading the transcript of oral argument unless he or she files in writing an election not to participate. [Rule 243.]

Subpart O—Reparation

§ 502.251 Proof on award of reparation.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts. [Rule 251.]

§ 502.252 Reparation statements.

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Exhibit No. 1 to this subpart, showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the respondent or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing. [Rule 252.]

§ 502.253 Interest in reparation proceedings.

Except as to applications for refund or waiver of freight charges under § 502.92 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest will be granted on awards of reparation in cases involving the misrating of cargo and arising under section 10(b) of the Shipping Act of 1984 and section 2 of the Intercoastal Shipping Act, 1933. Interest awarded in reparation proceedings will accrue from the date of injury to the date specified in the Commission order awarding reparations. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission Order. The rate of interest will be derived from the average monthly rates on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly Treasury bill rate at the date of the Commission Order awarding reparations. Compounding will be daily from the date of injury to the date specified in the Commission Order awarding reparations. The monthly rates on six-month U.S. Treasury bills for the reparation period will be summed and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period. [Rule 253.]

[49 FR 44369, Nov. 6, 1984, as amended at 5 FR 6331, Mar. 3, 1987]

§ 502.254 Attorney's fees in reparation proceedings.

(a) *Scope.* Except for proceedings under Subpart S of this part, the Commission shall, upon petition, award the complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984. For purposes of this section, "attorney's fees" includes the fair market value of the services of any person permitted to appear and practice before the Commission in accordance with Subpart B of this part and may include compensation for services rendered the complainant in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.

(b) *Content of petitions.* Petitons for attorney's fees under this section shall specify the number of hours claimed by each person representing the complainant at each identifiable stage of the proceeding, and shall be supported by evidence of the reasonableness of hours claimed and the customary fees charged by attorneys and associated legal representative in the community where the petitioner practices. Requests for additional compensation must be supported by evidence that the customary fees for the hours reasonably expended on the case would result in an unreasonable fee award.

(c) *Filing of petition.* (1) Petitions for attorney's fees shall be filed within 30 days of a final reparation award:

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to § 502.227(a)(3) of this part; or

(ii) With the Commission, if exceptions were filed to, or the Commission reviewed, the presiding officer's reparation award decision pursuant to § 502.227 of this part.

(2) For purposes of this section, a reparation award shall be considered final after a decision disposing of the merits of a complaint is issued and the time for the filing of court appeals has run or after a court appeal has terminated.

(d) *Replies to petitions.* Within 20 days of filing of the petition, a reply to the petition may be filed by the respondent, addressing the reasonableness of any aspect of the petitioner's claim. A respondent may also suggest adjustments to the claim under the criteria stated in paragraph (b) of this section.

(e) *Ruling on petitions.* Upon consideration of a petition and any reply thereto, the Commission or the presiding officer shall issue an order stating the total amount of attorney's fees awarded. The order shall specify the hours and rate of compensation found awardable and shall explain the basis for any additional adjustments. An award order shall be served within 60 days of the date of the filing of the reply to the petition or expiration of the reply period; except that in cases involving a substantial dispute of facts critical to the award determination, the Commission or presiding officer may hold a hearing on such issues and extend the time for issuing a fee award order by an additional 30 days. The Commission or the presiding officer may adopt a stipulated settlement of attorney's fees.

(f) *Appeals.* In cases where the presiding officer issues an award order, an appeal of that order may be made to the Commission under the same criteria and procedures as set forth in paragraphs (b), (c) and (d) of this section. The Commission may award additional attorney's fees to a complainant that substantially prevails in such an appeal proceeding. [Rule 254.]

[52 FR 6331, Mar. 3, 1987]

EXHIBIT NO. 1 TO SUBPART O [§ 502.252]—REPARATION STATEMENT TO BE FILED PURSUANT TO RULE 252

Claim of ———————— under the decision of the Federal Maritime Commission in Docket No. ————————.

Date of B/L	Date of delivery or tender of delivery	Date charges paid	Vessel	Voyage No.	Port of origin	Destination port	Route	Commodity	Weight or measurement	As charged		Should be		Reparation	Charges paid by*
										Rate	Amount	Rate	Amount		

*Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

Total amount of reparation $————————————.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ————————————.

———————————— Steamship Company, Collecting Carrier Respondent,

By ————————————, Auditor
By ————————————, *Claimant*
————————————, *Attorney*

(address and date)

Subpart P—Reconsideration of Proceedings

§ 502.261 Petitions for reconsideration and stay.

(a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration. Such petition shall be served in conformity with the requirements of Subpart H of this part. A petition will be subject to summary rejection unless it:

(1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;

(2) Identifies a substantive error in material fact contained in the decision or order; or

(3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is required and shall not operate as a stay of any rule or order of the Commission.

(b) A petition for stay of a Commission order which directs the discontinuance of statutory violations will not be received.

(c) The provisions of this section are not applicable to decisions issued pursuant to Subpart S of this part. [Rule 261.]

§ 502.262 Reply.

Any party may file a reply to a petition for reconsideration within fifteen (15) days after the date of service of the petition in accordance with § 502.74. The reply shall be served in conformity with Subpart H. [Rule 262.]

Subpart Q—Schedules and Forms

§ 502.271 Schedule of information for presentation in regulatory cases.

The following approved forms and illustrative wording for use in Commission proceedings appear in this part as follows:

(a) *Notice of appearance.* Exhibit No. 1 to Subpart B (following § 502.32).

(b) *Certification.* Certification of non-disclosure by persons requesting underlying data from carriers filing general rate increase or decrease (§ 502.67(a)(3)).

(c) *Complaint.* Exhibit No. 1 to Subpart E (following § 502.75).

(d) *Verification.* See complaint form in Exhibit No. 1 to Subpart E (following § 502.75).

(e) *Answer to complaint.* Exhibit No. 2 to Subpart E (following § 502.75).

(f) *Petition for leave to intevene.* Exhibit No. 3 to Subpart E (following § 502.75).

(g) *Special docket application.* Exhibit No. 1 to Subpart F (following § 502.95).

(h) *Certificate of service.* § 502.117 (Subpart H). See also § 502.320 for small claims.

(i) *Reparation statement.* Where the Commission finds reparation is due but that the amount cannot be ascertained: Exhibit No. 1 to Subpart O (following § 502.253).

(j) *Small claim form for informal adjudication.* Exhibit No. 1 to Subpart S (following § 502.305).

(k) *Respondent's consent form for informal adjudication.* Exhibit No. 2 to Subpart S (following § 502.305). [Rule 271.]

Subpart R—Nonadjudicatory Investigations

§ 502.281 Investigational policy.

The Commission has extensive regulatory duties under the various acts it is charged with administering. The conduct of investigations is essential to the proper exercise of the Commission's regulatory duties. It is the purpose of this subpart to establish procedures for the conduct of such investigations which will insure protection of the public interest in the proper and effective administration of the law. The Commission encourages voluntary cooperation in its investigations where such can be effected without delay or without prejudice to the public interest. The Commission may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law. [Rule 281.]

§ 502.282 Initiation of investigations.

Commission inquiries and nonadjudicatory investigations are originated by the Commission upon its own motion when in its discretion the Commission determines that information is required for the purposes of rulemaking or is necessary or helpful in the determination of its policies or the carrying out of its duties, including whether to institute formal proceedings directed toward determining whether any of the laws which the Commission administers have been violated. [Rule 282.]

§ 502.283 Order of investigation.

When the Commission has determined that an investigation is necessary, an Order of Investigation shall be issued. [Rule 283.]

§ 502.284 By whom conducted.

Investigations are conducted by Commission representatives designated and duly authorized for the purpose. (See § 502.25.) Such representatives are authorized to exercise the duties of their office in accordance with the laws of the United States and the regulations of the Commission, including the resort to all compulsory processes authorized by law, and the administration of oaths and affirmances in any matters under investigation by the Commission. [Rule 284.]

§ 502.285 Investigational hearings.

(a) Investigational hearings, as distinguished from hearings in adjudicatory proceedings, may be conducted in the course of any investigation undertaken by the Commission, including inquiries initiated for the purpose of determining whether or not a person is complying with an order of the Commission.

(b) Investigational hearings may be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of investigation. [Rule 285.]

§ 502.286 Compulsory process.

The Commission, or its designated representative may issue orders or subpenas directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Such orders and subpenas shall be served in the manner provided in § 502.134. [Rule 286.]

§ 502.287 Depositions.

The Commission, or its duly authorized representative, may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person designated by the Commission having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and be deposed and to produce evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in § 502.131. [Rule 287.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.288 Reports.

The Commission may issue an order requiring a person to file a report or answers in writing to specific questions relating to any matter under investigation. [Rule 288.]

§ 502.289 Noncompliance with investigational process.

In case of failure to comply with Commission investigational processes, appropriate action may be initiated by the Commission, including actions for enforcement by the Commission or the Attorney General and forfeiture of penalties or criminal actions by the Attorney General. [Rule 289.]

§ 502.290 Rights of witness.

Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the depositions, as reduced to writing by or under the direction of the person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter or right, otherwise participate in the investigation. [Rule 290.]

§ 502.291 Nonpublic proceedings.

Unless otherwise ordered by the Commission, all investigatory proceedings shall be nonpublic. [Rule 291.]

Subpart S—Informal Procedure for Adjudication of Small Claims

§ 502.301 Statement of policy.

(a) Section 11(a) of the Shipping Act of 1984 permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) Section 22 of the Shipping Act, 1916, permits any person to file a complaint against any common carrier by water in interstate and offshore domestic commerce or against any other person subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, claiming a violation of those statutes, and to seek reparation for that violation.

(c) With the consent of both parties, claims filed under this subpart in the amount of $10,000 or less will be referred to the Commission's Informal Dockets Activity for adjudication and decision by its Settlement Officers without the necessity of formal proceedings under the rules of this part.

(d) Determination of claims under this subpart shall be administratively final and conclusive. [Rule 301.]

§ 502.302 Limitations of actions.

(a) Claims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.

(b) Claims alleging violations of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, must be filed within two years from the time the cause of action arises.

(c) A claim is deemed filed on the date it is received by the Commission. [Rule 302.]

§ 502.303 [Reserved]

§ 502.304 Procedure and filing fee.

(a) A sworn claim under this subpart shall be filed in the form prescribed in Exhibit No. 1 to this subpart. Three (3) copies of this claim must be filed, together with the same number of copies of such supporting documents as may be deemed necessary to establish the claim. Copies of tariff pages need not be filed; reference to such tariffs or to pertinent parts thereof will be sufficient. Supporting documents may consist of affidavits, correspondence, bills of lading, paid freight bills, export declarations, dock or wharf receipts, or of such other documents as, in the judgment of the claimant, tend to establish the claim. The Settlement Officer may, if deemed necessary, request additional documents or information from claimants. Claimant may attach a memorandum, brief or other document containing discussion, argument, or legal authority in support of its claim. If a claim filed under this subpart involves any shipment which has been the subject of a previous claim filed with the Commission, formally or informally, full reference to such previous claim must be given.

(b) Claims under this subpart shall be addressed to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Such claims shall be accompanied by remittance of a $25 filing fee.

(c) Each claim under this subpart will be acknowledged with a reference to the Informal Docket Number assigned. The number shall consist of a numeral(s) followed by capital "I" in parentheses. All further correspondence pertaining to such claims must refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under § 502.311 and will be adjudicated under subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decison shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

§ 502.305 Applicability of other rules of this part.

Except as specifically provided in this subpart, the Rules in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 305.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

EXHIBIT NO. 1 TO SUBPART S [§ 502.304(a)]—SMALL CLAIM FORM FOR INFORMAL ADJUDICATION AND INFORMATION CHECKLIST

Federal Maritime Commission, Washington, DC.

Informal Docket No.———

____

(Claimant)

vs.

____

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in subpart S (46 CFR 502.301–502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

____

(Date)

____

(Claimant's signature)

____

(Claimant's address)

____

(Signature of agent or attorney)

____

(Agent's or attorney's address)

Verification

State of ———, County of ———, ss: ———, being first duly sworn on oath deposes and says that he or she is

____

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

____

Subscribed and sworn to before me, a notary public in and for the State of ———, County of ———, this —— day of ——— 19—.
(Seal)

____

(Notary Public)

My Commission expires, ______________

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of $10,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to subpart S], the claim will be adjudicated by an administrative law judge under subpart T of Part 502.

Under the Shipping Act of 1984 [for foreign commerce], the claim must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of claimant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the claim must be filed within two (2) years from the time the cause of action accrues and may only be brought against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

A violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a verification must be included. (See §§ 502.21-502.32, 502.112, and 502.304.) An original and two (2) copies of the claim *and all attachments*, including a brief in support of the claim, must be submitted.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990]

EXHIBIT NO. 2 TO SUBPART S [§ 502.304(e)]—RESPONDENT'S CONSENT FORM FOR INFORMAL ADJUDICATION

Federal Maritime Commission, Washington, DC.

Informal Docket No. ——

Respondent's Affidavit

I authorize the Settlement Officer to determine the above-numbered claim in accordance with subpart S (46 CFR 502) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission Review.

(Date) ————————————

(Signed) ————————————

(Capacity) ————————————

Verification

State of ——, County of ——, ss: ——, being first duly sworn on oath deposes and says that he or she is ——, (Title or Position) and is the person who signed the foregoing and agrees without qualification to its truth.

————————————

Subscribed and sworn to before me, a notary public in and for the State of ——, County of ——, this —— day of ——, 19—.
(Seal)

————————————

(Notary Public)

My Commission expires. ————————

Certificate of Service [See § 502.320]

Subpart T—Formal Procedure for Adjudication of Small Claims

§ 502.311 Applicability.

In the event the respondent elects not to consent to determination of the claim under subpart S of this part, it shall be adjudicated by the administrative law judges of the Commission under procedures set forth in this subpart, if timely filed under § 502.302. The previously assigned Docket Number shall be used except that it shall now be followed by capital "F" instead of "I" in parentheses (See § 502.304(c)). The complaint shall consist of the documents submitted by the claimant under subpart S of this part. [Rule 311.]

§ 502.312 Answer to complaint.

The respondent shall file with the Commission an answer within twenty-five (25) days of service of the complaint and shall serve a copy of said answer upon complainant. The answer shall admit or deny each matter set forth in the complaint. Matters not specifically denied will be deemed admitted. Where matters are urged in defense, the answer shall be accompanied by appropriate affidavits, other documents, and memoranda. [Rule 312.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.313 Reply of complainant.

Complainant may, within twenty (20) days of service of the answer filed by respondent, file with the Commission and serve upon the respondent a reply memorandum accompanied by appropriate affidavits and supporting documents. [Rule 313.]

§ 502.314 Additional information.

The administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent. [Rule 314.]

§ 502.315 Request for oral hearing.

In the usual course of disposition of complaints filed under this subpart, no oral hearing will be held, but, the administrative law judge, in his or her discretion, may order such hearing. A request for oral hearing may be incorporated in the answer or in complainant's reply to the answer. Requests for oral hearing will not be entertained unless they set forth in detail the reasons why the filing of affidavits or other documents will not permit the fair and expeditious disposition of the claim, and the precise nature of the facts sought to be proved at such oral hearing. The administrative law judge shall rule upon a request for oral hearing within ten (10) days of its receipt. In the event an oral hearing is ordered, it will be held in accordance with the rules applicable to other formal proceedings, as set forth in subparts A through Q of this part. [Rule 315.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.316 Intervention.

Intervention will ordinarily not be permitted. [Rule 316.]

§ 502.317 Oral argument.

No oral argument will be held unless otherwise directed by the administrative law judge. [Rule 317.]

§ 502.318 Decision.

(a) The decision of the administrative law judge shall be final, unless, within twenty-two (22) days from the date of service of the decision, either party requests review of the decision by the Commission, asserting as grounds therefor that a material finding of fact or a necessary legal conclusion is erroneous or that prejudicial error has occurred, or unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review. [Rule 318.]

(b) If the complainant is awarded reparations pursuant to section 11 of the Shipping Act of 1984, attorney's fees shall also be awarded in accordance with § 502.254 of this part. [Rule 318.]

[49 FR 44369, Nov. 6, 1984, as amended at 52 FR 6332, Mar. 3, 1987]

§ 502.319 Date of service and computation of time.

The date of service of documents served by the Commission shall be that which is shown in the service stamp thereon. The date of service of documents served by parties shall be the date when the matter served is mailed or delivered in person, as the case may be. When the period of time prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation. [Rule 319.]

§ 502.320 Service.

All claims, resubmitted claims, petitions to intervene and rulings thereon, notices of oral hearings, notices of oral arguments (if necessary), decisions of the administrative law judge, notices of review, and Commission decisions shall be served by the administrative law judge or the Commission. All other pleadings, documents and filings shall, when tendered to the Commission, evidence service upon all parties to the proceeding. Such certificate shall be in substantially the following form:

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by [mailing, delivering to courier, or delivering in person], a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Dated at —— this —— day of ——, 19—.

(Signature) ————————————

(For) ————————————

[Rule 320.]

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this subpart, rules in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

Subpart U—Conciliation Service

§ 502.401 Definitions.

For purposes of this subpart:

(a) *Disputes* means disagreements between two or more parties arising from the transportation of goods or the performance of services in connection with such transportation in the domestic offshore commerce or the foreign commerce of the United States; a difference of opinion regarding the interpretation of any tariff, rate, rule, or regulation; a disagreement regarding the performance of any service in connection with such transportation; a disagreement with respect to an alleged violation of the shipping statutes; and other disagreement or opposing opinion regarding any matter connected with transportation of cargoes in the waterborne commerce of the United States. This definition is limited to those disputes which fall within the jurisdiction of the Federal Maritime Commission.

(b) *Shipping statutes* means the Shipping Act of 1984, 46 U.S.C. app. 1701–1720; Shipping Act, 1916, 46 U.S.C. app. 801 et seq.; Merchant Marine Act, 1936, 46 U.S.C. app. 1101 et seq.; Merchant Marine Act, 1920, 46 U.S.C. app. 861 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 et seq.; and amendments of and Acts relating to the foregoing, to the extent of the Federal Maritime Commission's jurisdiction under such Acts.

(c) *Advisory opinions* means nonbinding conclusions reached by a conciliator on the basis of oral presentation and/or documentary authority.

(d) *Domestic offshore commerce* means waterborne common carriage between:

(1) The Continental United States and Alaska or Hawaii;

(2) Alaska and Hawaii;

(3) The United States or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia); and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. chapter 105.

(e) *Foreign commerce* means waterborne common carriage between the United States or any of its territories, commonwealths, districts or possessions, and a foreign country. [Rule 401.]

§ 502.402 Policy.

It is the policy of the Federal Maritime Commission:

(a) To offer its good offices and expertise to parties to disputes involving matters within its jurisdiction, so as to permit resolution of such disputes with dispatch and without the necessity of costly and time-consuming formal proceedings;

(b) To facilitate and promote the resolution of problems and disputes by encouraging affected parties to resolve differences through their own resources;

(c) To create a forum in which grievances, interpretations, problems, and questions involving the waterborne commerce of the United States may be aired, discussed and, hopefully, resolved to the mutual advantage of all concerned parties. [Rule 402.]

§ 502.403 Persons eligible for service.

Request for conciliation service may be made by any shipper, shippers' association, merchant, carrier, conference of carriers, freight forwarder, marine terminal operator, Government agency, or any other person affected by or involved in the transportation of goods by common carrier in the waterborne domestic offshore or foreign commerce of the United States. [Rule 403.]

§ 502.404 Procedure and fee.

(a) The request for conciliation should be addressed to the Federal Maritime Commission Conciliation Service, Washington, D.C. 20573, and should contain the details of the dispute, names and addresses of all involved parties, the contentions of each party or parties, and copies of any documents that are relevant to the disposition of the issues. If the request is made by any one party to the dispute, the party requesting conciliation should mail or deliver to the other party or parties to the dispute a copy of the letter of request, with attachments, if any. The request shall be accompanied by remittance of a $25 service fee.

(b) Each matter will be assigned a number prefixed by the letters FMCCS and assigned to a conciliator for disposition and the involved parties will be informed of the case number and the name of the conciliator.

(c) While it is preferable that all parties involved in a dispute request a service jointly, a request by a single party for the service will be acted upon, provided all parties agree that the dispute should be conciliated. In the event that the request is made by only one party, the conciliator will contact the other party or parties to the dispute and be advised as to whether such parties agree to participate in the conciliation. If the other party or parties to the dispute do not agree to the Conciliation Service, no further action will be taken by the conciliator and the conciliation ceases.

(d) The parties will be free to determine the best procedures to be used with the qualification that the conciliator may disapprove procedures that would in his or her opinion be either too time-consuming or involve inordinate expense to the Federal Maritime Commission. The parties may agree to (1) fix a time and place for the oral presentation of each party's contention; and (2) request affidavits, documents, or other materials that could help resolve the dispute. The conciliator will be in a strictly advisory capacity. There will be no written record of the conciliation discussions.

(e) Participation in the conciliation of a dispute is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. [Rule 404.]

§ 502.405 Assignment of conciliator.

The Secretary of the Commission, giving due regard to the type and complexity of the problem presented and the degree of expertise required, will assign a conciliator to each dispute. [Rule 405.]

§ 502.406 Advisory opinion.

(a) The conciliator will write an advisory opinion that must meet the approval of all parties. If the advisory opinion, or revision thereof requested by one or more of the parties, is not unanimously agreed upon, then the conciliation will cease, without prejudice to any of the parties involved. If unanimity is not reached, the conciliator will note in a report to the Commission, which shall be served on all parties, that the parties failed to reach agreement. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and be made available to the public.

(b) There will be no appeal from, or review of, such opinions and any party may pursue any further course of action under any other rule or statute that it deems advisable. [Rule 406.]

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

SOURCE: 52 FR 28264, July 29, 1987, unless otherwise noted.

§ 502.501 General provisions.

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 ("EAJA"), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Federal Maritime Commission ("the Commission"). An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

(c) *Proceedings covered.* (1)(i) EAJA applies to adversary adjudications conducted by the Commission under this part. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of any agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act.

(iii) Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

(2) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(3) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(d) *Eligibility of applicants.* (1) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this section and § 502.502.

(2) The types of eligible applicants are:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(3) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns o controls a majority of the votin shares or other interests, will be considered an affiliate for purposes of thi subpart, unless the adjudicative off cer determines that such treatmen would be unjust and contrary to th

purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on agency counsel.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by the persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under this subpart may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

(g) *Awards against other agencies.* If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 502.502 Information required from applicants.

(a) *Contents of petition.* (1) An application for an award of fees and expenses under EAJA shall be by petition under § 502.69 of this part, shall clearly indicate that the application is made under EAJA, and shall identify the applicant and the proceeding (including docket number) for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(2) The petition shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(3) The petition shall state the amount of fees and expenses for which an award is sought.

(4) The petition may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(5) The petition shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its petition a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 502.501(d)(6) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31-503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

§ 502.503 Procedures for considering petitions.

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleadings or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer.

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1)(i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is the paying agency, the application for payment of award shall be submitted to: Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573.

Subpart W—Paperwork Reduction Act

§ 502.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement:

Section	Current OMB control no.
502.27 (Form FMC.12)	3072-0001

PART 503—PUBLIC INFORMATION

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AUTHORITY: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted.

Subpart A—General

§ 503.1 Statement of policy.

(a) The Chairman of the Federal Maritime Commission is responsible for the effective administration of the provisions of Pub. L. 89-487, as amended. The Chairman shall carry out this responsibility through the program and the officials as hereinafter provided in this part.

(b) In addition, the Chairman, pursuant to his responsibility, hereby directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information, records, decisions or submittals in accordance with the provisions of § 503.31.

Subpart B—Publication in the Federal Register

§ 503.11 Materials to be published.

(a) The Commission shall separately state and concurrently publish the following materials in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its central and field organization and the established places at which the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(5) Every amendment, revision, or repeal of the foregoing.

(b) The Commission's publication with respect to paragraph (a)(1) of this section has been and shall continue to be by publication in the FEDERAL REGISTER of the Rules and Regulations, Commission Order No. 1 (Amended), and amendments and supplements thereto.

(c) The Commission's publications with respect to paragraphs (a)(2), (a)(3), and (a)(4) of this section, including amendments, revisions, and repeals, have been and shall continue to be by publication in the FEDERAL REGISTER as part of the Code of Federal Regulations, title 46, chapter IV.

§ 503.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the FEDERAL REGISTER and not so published.

§ 503.13 Incorporation by reference.

For purposes of this subpart, matter which is reasonably available to the class of persons affected hereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Office of the FEDERAL REGISTER.

[49 FR 44401, Nov. 6, 1984; 49 FR 47 Dec. 4, 1984]

Subpart C—Commission Opinions Orders

§ 503.21 Public records.

(a) The Commission shall, in accor ance with this part, make the follo ing materials available for public spection and copying:

(1) Final opinions (including conc ring and dissenting opinions) and orders made in the adjudication cases.

(2) Those statements of policy interpretations which have b adopted by the Commission.

(3) Administrative staff manuals instructions to staff that affect member of the public.

(b) To prevent unwarranted inva of personal privacy, the Commis may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each case, explain in writing the justification for the deletion.

§ 503.22 Current index.

The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by subpart B of this part to be made available or published. The index shall be available at the Office of the Secretary, Washington, DC 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor made in accordance with subpart D of this part.

§ 503.23 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

Subpart D—Procedure Governing Availability of Commission Records—Freedom of Information Act

§ 503.31 Records available at the Office of the Secretary.

The following records are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(a) Proposed and final rules and regulations of the Commission including general substantive rules and statements of policy and interpretations.

(b) Rules of Practice and Procedure.

(c) Reports of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings,[1] except for materials which are the subject of a protective order.

(e) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

(f) Press releases.

(g) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.

(h) Annual reports of the Commission.

[55 FR 38329, Sept. 18, 1990]

§ 503.32 Records generally available.

The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary:

(a) Agreements filed and in effect pursuant to section 15 of the Shipping Act, 1916 and sections 5 and 6 of the Shipping Act of 1984.

(b) Agreements filed under section 15 of the Shipping Act, 1916 and section 5 of the Shipping Act of 1984 which have been noticed in the FEDERAL REGISTER.

(c) Tariffs filed under the provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Shipping Act of 1984.

(d) Terminal tariffs filed pursuant to Part 515 of this chapter.

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[1] Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

(e) List of certifications of financial responsibility pertaining to Pub. L. 89-777.

(f) List of licensed ocean freight forwarders.

[49 FR 44401, Nov. 6, 1984, as amended at 55 FR 38330, Sept. 18, 1990]

§ 503.33 Other records available upon written request under the Freedom of Information Act.

(a) A member of the public who requests permission to inspect, copy or be provided with any Commission records not described in §§ 503.31 and 503.32 shall:

(1) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, DC 20573. Any such request shall be clearly marked on the exterior with the letters FOIA; and

(2) Reasonably describe the record or records sought.

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of §§ 503.34 and 503.35.

[55 FR 38330, Sept. 18, 1990]

§ 503.34 Procedures on requests for documents.

(a) *Determination of compliance with requests for documents.* (1) Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Secretary within ten (10) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request.

(3) The Secretary shall immediately notify the party making such request of the determination made, the reasons therefor, and, in the case of a denial of such request, shall notify the party of its right to appeal that determination to the Chairman.

(b) *Appeals from adverse determination (denial of request).* (1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal shall be addressed to: Chairman, Federal Maritime Commission, Washington, DC 20573, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Secretary in the case of a total denial of the request, or within a reasonable time following request, or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Secretary, the Chairman of the Federal Maritime Commission, or the Chairman's specific delegate in his or her absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of paragraph 4 of subsection (a) of the FOIA (Pub. L. 93-502, 88 Stat. 1561-1562, November 21, 1974) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances, as specified in this paragraph, the time limits prescribed with respect to initial actio or actions on appeal may be extende by written notice from the Secretar of the Commission to the perso making such request, setting forth th reasons for such extension and th date on which a determination is e pected to be dispatched. No suc notice shall specify a date that wou result in an extension for more than ten (10) working days. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by Commission to meet the time limitation.* Failure by the Commission either to deny or grant any request for documents within the time limits prescribed by FOIA (5 U.S.C. 552, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 503.35 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records shall not be available:

(1) Records specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive order.

(2) Records related solely to the internal personnel rules and practices of the Commission. Such records relate to those matters which are for the guidance of Commission personnel with respect to their employment with the Federal Maritime Commission.

(3) Records specifically exempted from disclosure by statute.

(4) Information given in confidence. This includes information obtained by or given to the Commission which constitutes trade secrets, confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(5) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Secretary, and the General Counsel, regarding the preparation of Commission orders and decisions, other documents received or generated in the process of issuing an order, decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy. This exemption includes all personnel and medical records and all private, personal, financial, or business information contained in other files which, if disclosed to the public, would invade the privacy of any person, including members of the family of the person to whom the information pertains.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

best copy available

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

(c) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 52 FR 13682, Apr. 24, 1987]

§ 503.36 Commission report of actions.

On or before March 1 of each calendar year, the Federal Maritime Commission shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. This report shall include:

(a) The number of determinations made by the Federal Maritime Commission not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reasons for the action upon each appeal that results in a denial of information.

(c) The name and title or position of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of FOIA, as amended November 21, 1974, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Commission implementing the provisions of the FOIA, as amended November 21, 1974.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer fully the provisions of the FOIA, as amended.

Subpart E—Fees

§ 503.41 Policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such services are to be recovered by the payment of fees (Act of August 31, 1951, 5 U.S.C. 140 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552).

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed; except that no fees shall be assessed for search, duplication or review in connection with requests for single copies of materials described in §§ 503.11 and 503.21:

(1) Records/documents search.

(2) Duplication of records/documents.

(3) Review of records/documents.

(4) Cerification of copies of records/documents.

(b) Fees shall also be assessed for the following services provided by the Commission:

(1) Subscriptions to Commission publications.

(2) Placing one's name, as an interested party, on the mailing list of a docketed proceeding.

(3) Processing nonattorney applications to practice before the Commission.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13682, Apr. 24, 1987]

§ 503.42 Payment of fees and charges.

The fees charged for special services may be paid through the mail by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcripts of hearings. Transcripts of hearings, testimony and oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

§ 503.43 Fees for services.

(a) *Definitions.* The following definitions apply to the terms when used in this subpart:

(1) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search for material will be done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Search is distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(2) *Duplication* means the process of making a copy of a document necessary to respond to a Freedom of Information Act or other request. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* means the process of examining documents located in response to a commerical use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the agency must determine the use to which a requester will put the documents requested. Where the agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific category.

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of cur-

rent interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. *Freelance* journalists, may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(8) *Direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(b) *General.* (1) The basic fees set forth in paragraph (c) of this section provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(2) The fees for search, duplication and review set forth in paragraph (c) of this section reflect the full allowable direct costs expected to be incurred by the agency for the service. Costs of search and review may be assessed even if it is determined that disclosure of the records is to be withheld. Cost of search may be assessed even if the agency fails to locate the records. Requesters much reasonably describe the records sought. The following restrictions, limitations and guidelines apply to the assessment of such fees:

(i) For commercial use requesters, charges recovering full direct costs for search, review and duplication of records will be assessed.

(ii) For educational and non-commercial scientific institution requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) For representative of the news media requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages.

(iv) For all other requesters, no charge will be assessed for review of records. Charges recovering full direct costs for search and duplication of records will be assessed excluding charges for the first 100 pages of duplication and the first two hours of search time. Requests from individuals for records about themselves, filed in a Commission system of records, will be treated under the fee provisions of the Privacy Act of 1984 which permit fees only for duplication.

(v) No fee may be charged for search, review or duplication if the costs of routine collection and processing of the fee are likely to exceed the amount of the fee.

(vi) Documents shall be furnished without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a waiver or reduction of charges is appropriate the following factors will be taken into consideration.

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(vii) Whenever it is anticipated that fees chargeable under this section will exceed $25.00 and the requester has not indicated in advance a willingness to pay fees as high as anticipated, the requester will be notified of the amount of the anticipated fee. In such cases the requester will be given an opportunity to confer with Commission personnel with the object of reformulating the request to meet the needs of the requester at a lower cost.

(viii) Interest may be charged record requesters who fail to pay fees assessed. Assessment of interest may begin on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billings. Receipt of payment by the agency will stay the accrual of interest.

(ix) Whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly. Multiple requests on unrelated subjects will not be aggregated.

(x) The agency may require a requester to make advance payment only when:

(A) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the requester will be required to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester; or

(B) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, in which case, the agency will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(xi) Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies where appropriate to encourage payment.

(xii) Whenever action is taken under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, the administrative time limits prescribed in subsection (a)(6) of 5 U.S.C. 552 (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits will begin only after the Commission has received fee payments described above.

(c) *Charges for search, review, duplication and certification.* (1) Records search will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of $11.00 per hour and by professional/executive personnel at a rate of $23.00 per hour.

(ii) Minimum charge for record search is $11.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full direct costs at the rate of $38.00 per hour. Charges for review will be assessed only for initial review to determine the applicability of a specific exemption to a particular record. No charge will be assessed for review at the administrative appeal level.

(3) Charges for duplication of records and documents will be assessed as follows, limited to size 8½" x 14" or smaller:

(i) If performed by requesting party, at the rate of five cents per page (one side).

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $11.00 per hour.

(iii) Minimum charge for copying is $3.50.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5.00 for each certification.

(d) Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below for calendar year terms. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon cancellation of subscription by a purchaser.

(1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $195.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $120.

(3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of $16.50, and (ii) an annual subscription rate of $8.25 for all amendments to existing regulations and any new regulations issued.

(4) *Exceptions.* No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of the above Commission publications individually requested in person or by mail. In addition, a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(i) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(ii) The recipient is another governmental agency, Federal, State, or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(iii) The recipient is a college or university.

(iv) The recipient does not fall within paragraphs (d)(4) (i), (ii), or (iii) of this section but is determined by the Commission to be appropriate in the interest of its programs.

(e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $3 per proceeding.

(f) The FMC guide on the shipping of automobiles, entitled *Automobile Manufacturers' Measurements*, is available from the U.S. Government Printing Office, on a subscription basis.

(g) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, Part 502 of this chapter, for an initial fee of $4.25. Future amendments to the reprint are available at an annual subscription rate of $4.

(h) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $13 pursuant to § 502.27 of this chapter.

(i) Upon a determination by the Commission that waiver or reduction of the fees prescribed in this section is in the public interest because the information furnished has been determined to be of primary benefit to the general public, such information shall be furnished without charge or at a reduced charge at the discretion of the Commission.

(j) Additional issuances, publications and services of the Commission may be made available for fees to be determined by the Secretary which fees shall not exceed the cost to the Commission for providing them.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13683, Apr. 24, 1987]

Subpart F—Information Security Program

§ 503.51 Definitions.

(a) *Original classification* means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, together with a classification designation signifying the level of protection required.

(b) *Derivative classification* means a determination that information is in substance the same as information currently classified, and the application of the same classification markings.

(c) *Declassification date or event* means a date or event upon which classified information is automatically declassified.

(d) *Downgrading date or event* means a date or event upon which classified information is automatically downgraded in accordance with appropriate downgrading instructions on the classified materials.

(e) *National security* means the national defense or foreign relations of the United States.

(f) *Foreign government information* means either information provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

§ 503.52 Senior agency official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission who shall be responsible for directing and administering the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

§ 503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Security Officer with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12356, and Information Security Oversight Office Directive No. 1. The program shall include initial, refresher, and termination briefings;

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons;

(c) Act on all suggestions and complaints concerning the Commission's information security program;

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12356; and

(e) Consider and decide other questions concerning classification and declassification that may be brought before it.

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to classify any Commission originated information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in § 503.51(f), the Member or employee shall immediately notify the Security Officer and appropriately protect the information.

(c) If the Security Officer believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority.

§ 503.55 Derivative classification.

(a) Any document that includes paraphrases, restatements, or summaries of, or incorporates in new form, information that is already classified, shall be assigned the same level of classification as the sources, unless consultation with originators or instructions contained in authorized classification guides indicate that no classification, or a lower classification than originally assigned, should be used.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions, and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) A derivative document that derives its classification from the approved use of the classification guide of another agency shall bear the declassification date required by the provisions of that classification guide.

(d) Documents classified derivatively on the basis of source documents or classification guides shall bear all applicable marking prescribed in sections 2001.5(a) through 2001.5(e), Information Security Oversight Office Directive No. 1.

(1) *Classification authority.* The authority for classification shall be shown as follows:

(i) *"Classified by (description of source documents or classification guide)", or*

(ii) *"Classified by multiple sources"*, if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "Classified by Multiple Sources" shall cite the source document in its "Classified by" line rather than the term "Multiple sources."

(2) *Declassification and downgrading instructions.* Date or events for automatic declassification or downgrading, or the notation "Originating Agency's Determination Required" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on "declassify on" line as follows:

"Declassify on: (date, description of event)
or
"Originating Agency's Determination Required (OADR)."

§ 503.56 General declassification policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 12356, only over that information originally classified by the

Commission under previous Executive orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Commission Security Officer, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

(b) The Commission does not now have original classification authority nor does it have in its possession any documents that it originally classified when it had such authority. The Commission has authorized the Archivist of the United States to automatically declassify information originally classified by the Commission and under its exclusive and final declassification jurisdiction at the end of 20 years from the date of original classification.

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission shall be subject to a review for declassification by the Commission, if:

(1) A request is made by a United States citizen or permanent resident alien, a federal agency, or a state or local government; and

(2) A request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(b) Requests for mandatory declassification reviews of documents originally classified by the Commission shall be in writing, and shall be sent to the Security Officer, Federal Maritime Commission, Washington, DC 20573.

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged under title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C 483a.

(d) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(e) If the document was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of whether the document should be declassified.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Security Officer shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt unless there are unusual circumstances.

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12356.

§ 503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification reveiw, the requester may submit an appeal in writing to the Commission through the Secretary, Federal Maritime Commission, Washington, DC 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Commission shall rule on the appeal within 30 days of receiving it. If additional time is required to make a determination, the Commission shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Commission shall notify the requester in writing of the final determination and the reasons for any denial.

(c) A determination by the Commission under paragraph (b) of this section is final and no further administrative appeal will be permitted. However, the requester may be informed that suggestions and complaints concerning the information security program prescribed by Executive Order 12356 may be submitted to the Director, Information Security Oversight Office, GSA(AT), Washington, DC 20540.

§ 503.59 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) Whenever classified material is removed from a storage facility, such material shall not be left unattended and shall be protected by attaching an appropriate classified document cover sheet to each classified document.

(c) Classified information being transmitted from one Commission office to another shall be protected with a classified document cover sheet and hand delivered by an appropriately cleared person to another appropriately cleared person.

(d) Classified information shall be made available to a person only when the possessor of the classified information has determined that the person seeking the classified information has a valid security clearance at least commensurate with the level of classification of the information and has established that access is essential to the accomplishment of authorized and lawful Government purposes.

(e) The requirement in paragraph (d) of this section, that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes, may be waived as provided in paragraph (f) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policy-making positions to which they were appointed by the President.

(f) Waivers under paragraph (e) of this section may be granted when the Commission Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is properly safeguarded; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(g) Persons seeking access to classified information in accordance with paragraphs (e) and (f) of this section must agree in writing:

(1) To be subject to a national security check;

(2) To protect the classified information in accordance with the provisions of Executive Order 12356; and

(3) Not to publish or otherwise reveal to unauthorized persons any classified information.

(h) Except as provided by directives issued by the President through the National Security Council, classified information that originated in another agency may not be disseminated outside the Commission.

(i) Only appropriately cleared personnel may receive, transmit, and maintain current access and accountability records for classified material.

(j) Each office which has custody of classified material shall maintain:

(1) A classified document register or log containing a listing of all classified holdings, and

(2) A classified document destruction register or log containing the title and date of all classified documents that have been destroyed.

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Commission Security Officer shall be notified, in writing, of the results of each inventory.

(l) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Commission Security Officer.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Security Officer shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Security Officer for preparation and receipting instructions. If the material is to be hand carried, the Security Officer shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

(p) Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities, whenever it is not under the direct supervision of authorized persons.

(q) Employees of the Commission shall be subject to appropriate sanctions, which may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation, if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12356 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Security Officer, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Security Officer.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

Subpart G—Access to Any Record of Indentifiable Personal Information

§ 503.60 Definitions.

For the purpose of this subpart:

(a) *Agency* means each authority of the government of the United States as defined in 5 U.S.C. 551(1) and shall include any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) *Commission* means the Federal Maritime Commission.

(c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence to whom a record pertains.

(d) *Maintain* includes maintain, collect, use, or disseminate.

(e) *Person* means any person not an individual and shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(f) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Federal Maritime Commission, including but not limited to a person's education, financial transactions, medical history, and criminal or employment history, and that contains the person's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(g) *Routine use* means [with respect to the disclosure of a record], the use of such records for a purpose which is compatible with the purpose for which it was collected.

(h) *Statistical record* means a record in a system of records, maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, but shall not include matter pertaining to the Census as defined in 13 U.S.C. 8.

(i) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.61 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Commission shall not disclose any record which is contained in a system of records, by any means of communication, to any person or other agency who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Commission may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Commission may disclose any such record, provided such disclosure is:

(1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C 552);

(3) For a routine use;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of title 13 U.S.C.;

(5) To a recipient who has provided the Commission with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States, as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; —

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Secretary of the Commission specifying the particular record and the law

enforcement activity for which it is sought;

(8) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee, subcommittee, or joint committee of Congress;

(9) To the Comptroller General, or any authorized representative, thereof, in the course of the performance of the duties of the GAO; or

(10) Under an order of a court of competent jurisdiction.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.62 Accounting of disclosures.

(a) The Secretary shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and 552a(c)(2).

(b) Except for a disclosure made under § 503.61(c)(7), the Secretary shall make the accounting described in paragraph (a) of this section available to any individual upon written request made in accordance with § 503.63(b) or § 503.63(c).

(c) The Secretary shall make reasonable efforts to notify the individual when any record which pertains to such individual is disclosed to any person under compulsory legal process, when such process becomes a matter of public record.

§ 503.63 Request for information.

(a) Upon request, in person or by mail, made in accordance with the provisions of paragraph (b) or (c) of this section, any individual shall be informed whether or not any Commission system of records contains a record pertaining to him or her.

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall:

(1) Provide information sufficient, in the opinion of the Secretary, to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card or medicare card;

(3) Complete and sign the appropriate form provided by the Secretary.

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall include in such request the following:

(1) Information sufficient in the opinion of the Secretary to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) A signed notarized statement to verify his or her identity.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.64 Commission procedure on request for information.

Upon request for information made in accordance with § 503.63, the Secretary or his or her delegate shall, within 10 days (excluding Saturdays, Sundays, and legal public holidays), furnish in writing to the requesting party notice of the existence or nonexistence of any records described in such request.

§ 503.65 Request for access to records.

(a) *General.* Upon request by any individual made in accordance with the procedures set forth in paragraph (b) of this section, such individual shall be granted access to any record pertaining to him or her which is contained in a Commission system of records. However, nothing in this section shall allow an individual access to any information compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a record pertaining to him or her in person or by mail in accordance with paragraphs (b) (1) and (2) of this section:

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 and shall:

(i) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card, or medicare card; and

(ii) Complete and sign the appropriate form provided by the Secretary.

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, and shall include therein a signed notarized statement to verify his or her identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his or her own choosing, while reviewing the record requested. If an individual elects to be so accompanied, he or she shall notify the Secretary of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the acompanying person. Failure to so notify the Secretary in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *Commission determination of requests for access.* (1) Upon request made in accordance with this section, the Secretary or his or her delegate shall:

(i) Determine whether or not such request shall be granted;

(ii) Make such determination and provide notification within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such request, and, if such request is granted shall:

(iii) Notify the individual that fees for reproducing copies will be made in accordance with § 503.69.

(2) If access to a record is denied because such information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, or for any other reason, the Secretary shall notify the individual of such determination and his or her right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making such request shall notify the Secretary whether the records requested are to be copied and mailed to the individual.

(2) If records are to be made available for personal inspection, the individual shall arrange with the Secretary a mutually agreeable time and place for inspection of the record.

(3) Fees for reproducing and mailing copies of records will be made in accordance with § 503.69.

[49 FR 44401, Nov. 6, 1984; 49 FR 47396, Dec. 4, 1984]

§ 503.66 Amendment of a record.

(a) *General.* Any individual may request amendment of a record pertaining to him or her according to the procedure in paragraph (b) of this section.

(b) *Procedures for requesting amendment of a record.* After inspection of a record pertaining to him or her, an individual may file with the Secretary a request, in person or by mail, for amendment of a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) *Commission procedures on request for amendment of a record.* (1) Not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request made in accordance with this section to amend a record in whole or in part, the Secretary or his or her delegate shall:

(i) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(ii) Inform the individual, by certified mail, return receipt requested, of refusal to amend the record, setting out the reasons therefor, and notify the individual of his or her right to appeal that determination to the Chairman of the Commission under § 503.67.

(2) The Secretary shall inform any person or other agency to whom a record has been disclosed of any correction or notation of dispute made by the Secretary with respect to such records, in accordance with 5 U.S.C. 552a(c)(4) referring to amendment of a record, if an accounting of such disclosure has been made.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.67 Appeals from denial of request for amendment of a record.

(a) *General.* An individual whose request for amendment of a record pertaining to him or her is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) *Procedure for appeal.* Not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) following receipt of notification of refusal to amend, an individual may file an appeal to amend the record. Such appeal shall:

(1) Be addressed to the Chairman, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573; and

(2) Specify the reasons for which the refusal to amend is challenged.

(c) *Commission procedure on appeal.* (1) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his or her absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than thirty (30) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(2) The Chairman shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's determination.

(3) If, on appeal, the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the Commission's determination.

(d) The Chairman, or his or her delegate in his or her absence, may extend up to thirty (30) days the time period prescribed in paragraph (c)(1) of this section within which to make a determination on an appeal from refusal to amend a record for the reasons that a fair and equitable review cannot be completed within the prescribed time period.

§ 503.68 Exemptions.

The following systems of records are exempt from the provisions of 5 U.S.C. 552a(c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemptions and the reasons therefor are described for each particular system of records.

(a) *FMC—1 Personnel Security File.* All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption from disclosure is required to honor promises of confidentiality.

(b) *FMC—7 Licensed Ocean Freight Forwarders File.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

(c) *FMC—22 Investigatory Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

(d) *FMC—24 Informal Inquiries and Complaint Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

(e) *FMC—25 Inspector General File.* (1) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

(2) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5) regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption from disclosure is required to honor promises of confidentiality.

(f) *FMC—26 Administrative Grievance File.* (1) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

(2) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption from disclosure is required to honor promises of confidentiality.

[53 FR 4027, Feb. 11, 1988]

§ 503.69 Fees.

(a) *General.* The following Commission services are available, with respect to requests made under the provisions of this subpart, for which fees will be charged as provided in paragraphs (b) and (c) of this section:

(1) Copying records/documents.

(2) Certification of copies of documents.

(b) *Fees for services.* The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of 30 cents per page (one side), limited to size 8¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5 for each certification.

(c) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission.

Subpart H—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

§ 503.70 Policy.

It is the policy of the Federal Maritime Commission, under the Provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b, Sept. 13, 1976) to entitle the public to the fullest practicable information regarding the decisional processes of the Commission. The provisions of this subpart set forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of the Commission in carrying out its responsibilities under the shipping statutes administered by this Commission.

§ 503.71 Definitions.

The following definitions apply for purposes of this subpart:

(a) *Agency* means the Federal Maritime Commission;

(b) *Information pertaining to a meeting* means, but is not limited to the following: the record of any agency vote taken under the provisions of this subpart, and the record of the vote of each member; a full written explanation of any agency action to close any portion of any meeting under this subpart; lists of persons expected to attend any meeting of the agency and their affiliation; public announcement by the agency under this subpart of the time, place, and subject matter of any meeting or portion of any meeting; announcement of whether any meeting or portion of any meeting shall be open to public observation or be closed; any announcement of any change regarding any meeting or portion of any meeting; and the name and telephone number of the Secretary of the agency who shall be designated by the agency to respond to requests for information concerning any meeting or portion of any meeting;

(c) *Meeting* means the deliberations of at least three of the members of the agency which determine or result in the joint conduct of disposition of official agency business, but does not include:

(1) Individual member's consideration of official agency business circulated to the members in writing for disposition on notation;

(2) Deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in §§ 503.74 and 503.75;

(3) Deliberations by the agency in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting or series of meetings as provided in § 503.80; or

(4) Deliberations pertaining to any change in any meeting or to changes in the public announcement of such a meeting as provided in § 503.83;

(d) *Member* means each individual Commissioner of the agency;

(e) *Person* means any individual, partnership, corporation, association, or public or private organization, other than an agency as defined in 5 U.S.C. 551(1));

(f) *Series of meetings* means more than one meeting involving the same particular matters and scheduled to be held no more than thirty (30) days after the initial meeting in such series.

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75 and 503.76, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

(b) The opening of a portion or portions of a meeting or a portion or portions of a series of meetings to public observation shall not be construed to include any participation by the public in any manner in the meeting. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the agency.

§ 503.73 Exceptions—meetings.

Except in a case where the agency finds that the public interest requires otherwise, the provisions of § 503.72(a) shall not apply to any portion or portions of an agency meeting or portion or portions of a series of meetings where the agency determined under the provisions of § 503.74 or § 503.75 that such portion or portions of such meeting or series of meetings is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of any agency;

(c) Disclose matters specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.

(a) Any member of the agency, the Managing Director or the General Counsel of the agency may request that any portion or portions of a series of meetings be closed to public observation for any of the reasons provided in § 503.73 by submitting such request in writing to the Secretary of the agency in sufficient time to allow the Secretary to schedule a timely vote on the request pursuant to paragraph (b) of this section.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary of the agency shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later then eight (8) days prior to the scheduled meeting of the agency.

(c) At the time the Secretary schedules a time for an agency vote as described in paragraph (b) of this section, he or she shall forward the request to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(d) At the time scheduled by the Secretary as provided in paragraph (b) of this section, the members of the agency, upon consideration of the request submitted under paragraph (a) of this section and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting may be closed to public observation for any of the reasons provided in § 503.73, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in § 503.73 permitting the closing of any meeting to public observation.

(e) In the case of a vote on a request under this section to close to public observation a portion or portions of a meeting, no such portion or portions of any meeting may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a meeting by recorded vote.

(f) In the case of a vote on a request under this section to close to public observation a portion or portions of a series of meetings as defined in § 503.71, no such portion or portions of a series of meetings may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a series of meetings. A determination to close to public observation a portion or portions of a series of meetings may be accomplished by a single vote on each of the issues described in paragraph (d) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984, as amended at 55 FR 38330, Sept. 18, 1990]

§ 503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.

(a) Any person as defined in § 503.71, whose interests may be directly affected by a portion of a meeting of the agency, may request that the agency close that portion of a meeting for the reason that matters in deliberation at that portion of the meeting are such that public disclosure of that portion of a meeting is likely to:

(1) Involve accusing any person of a crime, or formally censuring any person;

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(b) Any person described in paragraph (a) of this section who submits a request that a portion of a meeting be closed shall submit an original and 15 copies of that request to the Secretary, Federal Maritime Commission, Washington, D.C 20573, and shall state with particularity that portion of a meeting sought to be closed and the reasons therefor as described in paragraph (a) of this section.

(c) Upon receipt of any request made under paragraphs (a) and (b) of this section, the Secretary of the agency shall:

(1) Furnish a copy of the request to each member of the agency; and

(2) Furnish a copy of the request to the General Counsel of the agency.

(d) Upon receipt of a request made under paragraphs (a) and (b) of this section, any member of the agency may request agency action upon the request to close a portion of a meeting by notifying the Secretary of the agency of that request for agency action.

(e) Upon receipt of a request for agency action under paragraph (d) of this section, the Secretary of the agency shall schedule a time for an agency vote upon the request of the person whose interests may be directly affected by a portion of a meeting, which vote shall take place prior to the scheduled meeting of the agency.

(f) At the time the Secretary receives a request for agency action and schedules a time for an agency vote as described in paragraph (e) of this section, the request of the person whose interests may be directly affected by a portion of a meeting shall be forwarded to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(g) At the time scheduled by the Secretary, as provided in paragraph (e) of this section, the members of the agency, upon consideration of the request of the person whose interests may be directly affected by a portion of a meeting submitted under paragraphs (a) and (b) of this section, and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting or portion or portions of a series of meetings may be closed to public observation for any of the reasons provided in paragraph (a) of this section, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in paragraph (a) of this section permitting the closing of any portion of any meeting to public observation.

(h) In the case of a vote on a request under this section to close to public observation a portion of a meeting, no such portion of a meeting may be closed unless, by a vote on the issues described in paragraph (g) of this section, a majority of the entire membership of the agency shall vote to close such portion of a meeting by a recorded vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.

(a) Where the agency votes as provided in § 503.74 or § 503.75, to close to public observation a portion or portions of a meeting or a portion or portions of a series of meetings, the portion or portions of a meeting or the portion or portions of a series of meetings shall be closed.

(b) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74 or § 503.75, by which it is determined to close a portion or portions of a meeting or a portion or portions of a series of meetings to public observation, the Secretary shall make available to the public:

(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74, or § 503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79, 503.80 and 503.81.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be initiated pursuant to § 502.30 of this chapter.

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such record or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpena, the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in § 503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be withheld from public disclosure for any of the reasons provided in § 503.79, and whether or not the public interest requires that the information be disclosed notwithstanding the applicability of the reasons provided in § 503.79 permitting the withholding from public disclosure of the information pertaining to a meeting.

(d) In the case of a vote on a request under this section to withhold from public disclosure information pertaining to a portion or portions of a meeting, no such information shall be withheld from public disclosure unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information by recorded vote.

(e) In the case of a vote on a request under this section to withhold information pertaining to a portion or portions of a series of meetings, no such information shall be withheld unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information. A determination to withhold information pertaining to a portion or portions of a series of meetings from public disclosure may be accomplished by a single vote on the issues described in paragraph (c) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.81 Effect of vote to withhold information pertaining to meeting.

(a) Where the agency votes as provided in § 503.80 to withhold from public disclosure information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, such information shall be excepted from the requirements of §§ 503.78, 503.82 and 503.83.

(b) Where the agency votes as provided in § 503.80 to permit public disclosure of information pertaining to a portion of portions of a meeting or portion or portions of a series of meetings, such information shall be disclosed to the public as required by §§ 503.78, 503.82 and 503.83.

(c) Not later than the day following the date on which a vote is taken under § 503.80, by which the information pertaining to a meeting is determined to be disclosed, the Secretary shall make available to the public a written copy of such vote reflecting the vote of each member of the agency on the question.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.82 Public announcement of agency meeting.

(a) Except as provided in §§ 503.80 and 503.81 regarding a determination to withhold from public disclosure any information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, or as otherwise provided in paragraph (c) of this section, the Secretary of the agency shall make public announcement of each meeting of the agency.

(b) Except as otherwise provided in this section, public announcement of each meeting of the agency shall be accomplished not later than one week prior to commencement of a meeting or the commencement of the first meeting in a series of meetings, and shall disclose:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings shall be open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about a meeting.

(c) The announcement described in paragraphs (a) and (b) of this section may be accomplished less than one week prior to the commencement of any meeting or series of meetings, provided the agency determines by recorded vote that the agency business requires that any such meeting or series of meetings be held at an earlier date. In the event of such a determination by the agency, public announcement as described in paragraph (b) of this section shall be accomplished at the earliest practicable time.

(d) Immediately following any public announcement accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the FEDERAL REGISTER disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings is open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 27002, July 17, 1987]

§ 503.83 Public announcement of changes in meeting.

(a) Except as provided in §§ 503.80 and 503.81, under the provisions of paragraphs (b) and (c) of this section, the time or place of a meeting or series of meetings may be changed by the agency following accomplishment of the announcement and notice required by § 503.82, provided the Secretary of the agency shall publicly announce such change at the earliest practicable time.

(b) The subject matter of a portion or portions of a meeting or a portion or portions of a series of meetings, the time and place of such meeting, and the determination that the portion or portions of a series of meetings shall be open or closed to public observation may be changed following accomplishment of the announcement required by § 503.82, provided:

(1) The agency, by recorded vote of the majority of the entire membership of the agency, determines that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Secretary of the agency publicly announces, at the earliest practicable time, the change made and the vote of each member upon such change.

(c) Immediately following any public announcement of any change accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the Federal Register disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of any meeting or any portion or portions of any series of meetings is open or closed to public observation;

(5) Any change in paragraphs (c) (1), (c) (2), (c) (3), or (c) (4) of this section; and

(6) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.84 [Reserved]

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of this subpart, the following records shall be maintained by the Secretary of the agency:

(1) The certification of the General Counsel of the agency required by § 503.77;

(2) A statement from the officer presiding over the portion or portions of the meeting or portion or portions of a series of meetings setting forth the time and place of the portion or portions of the meeting or portion or portions of the series of meetings, the persons present at those times; and

(3) Except as provided in paragraph (b) of this section, a complete transcript or electronic recording fully recording the proceedings at each portion of each meeting closed to public observation.

(b) In case the agency determines to close to public observation any portion or portions of any meeting or portion or portions of any series of meetings because public observation of such portion or portions of any meeting is likely to specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, the agency may maintain a set of minutes in lieu of the transcript or recording described in paragraph (a)(3) of this section. Such minutes shall contain:

(1) A full and clear description of all matters discussed in the closed portion of any meeting;

(2) A full and accurate summary of any action taken on any matter discussed in the closed portion of any meeting and the reasons therefor;

(3) A description of each of the views expressed on any matter upon which action was taken as described in paragraph (b)(2) of this section;

(4) The record of any rollcall vote which shall show the vote of each member on the question; and

(5) An identification of all documents considered in connection with any action taken on a matter described in paragraph (b)(1) of this section.

(c) All records maintained by the agency as described in this section shall be held by the agency for a period of not less than two (2) years following any meeting or not less than one (1) year following the conclusion of any agency proceeding with respect to which that meeting or portion of a meeting was held.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.86 Public access to records.

(a) All transcripts, electronic recordings or minutes required to be maintained by the agency under the provisions of §§ 503.85(a)(3) and 503.85(b) shall be promptly made available to the public by the Secretary of the agency, except for any item of discussion or testimony of any witnesses which the agency determines to contain information which may be withheld from public disclosure because its disclosure is likely to disclose matters which are:

(1)(i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involved with accusing any person of a crime, or formally censuring any person;

(6) Of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concerned with the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in §§ 503.31 through 503.36.

(c) Records disclosed to the public under this section shall be furnished at the expense of the party requesting such access at the actual cost of duplication or transcription.

§ 503.87 Effect of provisions of this subpart on other subparts.

(a) Nothing in this subpart shall limit or expand the ability of any person to seek access to agency records under subpart D (§§ 503.31 to 503.36) of this part except that the exceptions of § 503.86 shall govern requests to copy or inspect any portion of any transcript, electronic recordings or minutes required to be kept under this subpart.

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of subpart G of this part.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.

504.1 Purpose and scope.
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504.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552, 553; secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

SOURCE: 49 FR 44415, Nov. 6, 1984, unless otherwise noted.

§ 504.1 Purpose and scope.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500 *et seq.*).

(b) This part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 21 of the Shipping Act, 1916 or section 15 of the Shipping Act of 1984. Penalty for non-compliance with a section 21 order is $100 a day for each day of default; penalty for falsification of such a report is a fine of up to $1,000 or imprisonment up to one year, or both. Penalty for violation of a Commission order under section 15 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. (Each day of a continuing violation constitutes a separate offense).

§ 504.2 Definitions.

(a) *Shipping Act, 1916* [46 U.S.C. app. 801-846] means the Shipping Act, 1916 as amended, 46 U.S.C. app. 801 *et seq.*

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 or in the Shipping Act, 1916, including a conference of such carriers.

(c) *Environmental impact* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *Potential action* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *Proposed action* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *Environmental assessment* means a concise document that serves to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9).

(g) *Recyclable* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. App. 1701-1720).

(i) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier.

§ 504.3 General information.

(a) All comments submitted pursuant to this part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

(b) A list of Commission actions for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (telephone (202) 523-5835).

§ 504.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they are purely ministerial actions or because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. The following Commission actions, and rulemakings related thereto, are therefore excluded:

(1) Issuance, modification, denial and revocation of Ocean Freight Forwarder licenses.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR part 540;

(3) [Reserved]

(4) Promulgation of procedural rules pursuant to 46 CFR part 502;

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce;

(6) Consideration of special permission applications filed pursuant to 46 CFR parts 550 or 580.

(7) Receipt of terminal tariffs pursuant to 46 CFR part 515.

(8) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933.

(9) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, 1916 or section 5 of the Shipping Act of 1984, which do not increase the authority set forth in the effective agreement.

(10) Consideration of agreements between common carriers which solely affect intraconference or inter-rate agreement relationships or pertain to administrative matters of conferences or rate agreements.

(11) Consideration of agreements between common carriers to discuss, propose or plan future action, the implementation of which requires filing a further agreement.

(12) Consideration of exclusive or non-exclusive equipment interchange or husbanding agreements.

(13) Receipt of non-exclusive transshipment agreements.

(14) Action relating to collective bargaining agreements.

(15) Action pursuant to section 9 of the Shipping Act of 1984 concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(16) Receipt of self-policing reports or shipper requests and complaints.

(17) Consideration of financial reports prepared by common carriers in the domestic offshore trades.

(18) Consideration of actions solely affecting the environment of a foreign country.

(19) Action taken on special docket applications pursuant to 46 CFR 502.92.

(20) Consideration of matters related solely to the issue of Commission jurisdiction.

(21) Investigations conducted pursuant to 46 CFR part 555.

(22) Investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act, 1916 or the Shipping Act of 1984.

(23) [Reserved]

(24) Action regarding access to public information pursuant to 46 CFR part 503.

(25) Action regarding receipt and retention of minutes of conference meetings.

(26) Administrative procurements (general supplies).

(27) Contracts for personal services.

(28) Personnel actions.

(29) Requests for appropriations.

(30) Consideration of all agreements involving marine terminal facilities and/or services except those requiring substantial levels of construction, dredging, land-fill, energy usage and other activities which may have a significant environmental effect.

(31) Consideration of agreements regulating employee wages, hours of work, working conditions or labor exchanges.

(32) Consideration of general agency agreements involving ministerial duties of a common carrier such as internal management, cargo solicitation, booking of cargo, or preparation of documents.

(33) Consideration of agreements pertaining to credit rules.

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than ten (10) days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within ten (10) days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 504.5.

[49 FR 44415, Nov. 6, 1984; 49 FR 473 Dec. 4, 1984]

§ 504.5 Environmental assessments.

(a) Every Commission action not specifically excluded under § 504.4 shall be subject to an environmental assessment.

(b) The OEA may publish in the Federal Register a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the FEDERAL REGISTER.

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the FEDERAL REGISTER. This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4 will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the FEDERAL REGISTER. The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the FEDERAL REGISTER.

(3) The major decision points in the EIS process are:

(i) The issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) The issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR part 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in § 503.43 of this chapter.

(3) Comments on the DEIS must be received by the Commission within ten (10) days of the date the Environmental Protection Agency (EPA) publishes in the FEDERAL REGISTER notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 504.3(a). Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to ten (10) days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within ten (10) days following EPA's notice in the FEDERAL REGISTER, assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within ten (10) days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 504.8 Record of decision.

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

§ 504.9 Information required by the Commission.

(a) Upon request of OEA, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit to OEA, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities.

(b) The statement submitted shall, to the fullest extent possible, include:

(1) The probable impact of the requested Commission action on the environment (*e.g.,* the use of energy or natural resources, the effect on air, noise, or water pollution), compared to the environmental impact created by existing uses in the area affected by it;

(2) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action; and

(3) Any alternatives to the requested Commission action.

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informal assistance in preparing this statement. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the OEA may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 21 of the Shipping Act, 1916, or section 15 of the Shipping Act of 1984

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 504.10 Time constraints on final administrative actions.

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates unless reduced pursuant to 40 CFR 1506.10(d), or unless required by a statutorily-prescribed deadline on the Commission action:

(a) Forty (40) days after EPA's publication of the notice described in § 504.7(b) for a DEIS; or

(b) Ten (10) days after publication of EPA's notice for an FEIS.

§ 504.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
504.4 through 504.7	3072-0035
504.9	3072-0035.

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

Sec.
505.1 Purpose and scope.
505.2 Definitions.
505.3 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.
505.4 Compromise of penalties: Relation to assessment proceedings.
505.5 Payment of penalty: Method; default.

Sec.
APPENDIX A TO PART 505—EXAMPLE OF COMPROMISE AGREEMENT TO BE USED UNDER 46 CFR 505.4
APPENDIX B TO PART 505—EXAMPLE OF PROMISSORY NOTE TO BE USED UNDER 46 CFR 505.5

NOTE: This part does not contain any collection of information requests or requirements within the meaning of the Paperwork Reduction Act of 1980, Pub. L. 96-511.

AUTHORITY: 5 U.S.C. 552, 553, secs. 32 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 831 and 841a); secs. 10, 11, 13, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1710, 1712, and 1716).

SOURCE: 49 FR 44418, Nov. 6, 1984, unless otherwise noted.

§ 505.1 Purpose and scope.

The purpose of this part is to implement the statutory provisions of section 32 of the Shipping Act, 1916, and section 13 of the Shipping Act of 1984, by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, and/or any order, rule or regulation (except for procedural rules and regulations contained in part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

[49 FR 44418, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 505.2 Definitions.

For the purposes of this part:

(a) *Assessment* means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) *Commission* means the Federal Maritime Commission.

(c) *Compromise* means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) *Person* includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(e) *Respondent* means any person charged with a violation.

(f) *Settlement* means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(g) *Violation* includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; and/or any order, rule or regulation (except for procedural rules and regulations contained in part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, or the Shipping Act of 1984.

(h) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 505.3 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for a hearing under section 22 of the Shipping Act, 1916, or sections 11 and 13 of the Shipping Act of 1984. The proceeding, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in part 502 of this chapter. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. A proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 505.4(e).

§ 505.4 Compromise of penalties: Relation to assessment proceedings.

(a) *Scope.* Except in pending assessment proceedings provided for in § 505.3 the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except where circumstances render it unnecessary, send a registered or certified demand letter to the respondent describing the specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The demand shall also include the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a demand provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 505.3(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When the penalty is compromised, such compromise will be made conditional upon the full payment of the compromised amount upon such terms and conditions as may be allowed.

(2) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such a compromise agreement is set forth as Appendix A to this part.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a copy of the executed agreement shall be furnished to the respondent.

(3) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this part is delegated to the Director, Bureau of Hearing Counsel.

§ 505.5 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent shall be made by:

(1) A bank cashier's check or other instrument acceptable to the Commission;

(2) Regular installments, with interest where appropriate, by check or other instrument acceptable to the Commission after the execution of a promissory note containing a confess-judgment agreement (Appendix B); or

(3) A combination of the above alternatives.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 505.3, or compromised and agreed to under § 505.4, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such a defaulting respondent is a licensed freight forwarder, such a default may also be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

APPENDIX A—EXAMPLE OF COMPROMISE AGREEMENT TO BE USED UNDER 46 CFR 505.4

Compromise Agreement

FMC File No. ——

This Agreement is entered into between:

(1) The Federal Maritime Commission and

(2) ————, hereinafter referred to as respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against respondent for the recovery of civil penalties provided under the ———— Act ——, for —— alleged violation(s) of Section(s) ——.

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by respondent to wit:

————————————————————

______________________.

Whereas, Section —— of the ——— Act —— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and,

Whereas, the respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by respondent or its officers, employees and agents.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between (date) and (date), the undersigned respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $——, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from respondent arising from the alleged violations set forth and described herein, that have been disclosed by respondent to the Commission and that occurred between (date) and (date).

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this agreement is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations, the parties hereby waive application of such procedures.

By ______________________

Title ______________________

Date ______________________

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission:

____

(Hearing Counsel)

____

Director, Bureau of Hearing Counsel

Date ______________________

APPENDIX B—EXAMPLE OF PROMISSORY NOTE TO BE USED UNDER 46 CFR 505.5

Promissory Note Containing Agreement for Judgment

FMC File No. ——

For valued received, ———— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $—— ($——) to be paid at the offices of the Commission in Washington, DC, by bank cashier's or certified check in the following installments:

$—— ($——) within — months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$—— ($——) within — months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of this execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [—— percent (——%) per annum].

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, (Respondent) does hereby authorize and empower any U.S. attorney, any of its assistants or any attorney of any court of record, Federal or State, to appear for him or her, and to enter and confess judgment against (Respondent) for the entire unpaid principal amount of this Promissory Note together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

(Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, pr vided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By: ____________________

Title: ____________________

Date: ____________________

PART 507—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MARITIME COMMISSION

Sec.

507.101 Purpose.
507.102 Application.
507.103 Definitions.
507.104—507.109 [Reserved]
507.110 Self-evaluation.
507.111 Notice.
507.112—507.129 [Reserved]
507.130 General prohibitions against discrimination.
507.131—507.139 [Reserved]
507.140 Employment.
507.141—507.148 [Reserved]
507.149 Program accessibility: Discrimination prohibited.
507.150 Program accessibility: Existing facilities.
507.151 Program accessibility: New construction and alterations.
507.152—507.159 [Reserved]
507.160 Communications.
507.161—507.169 [Reserved]
507.170 Compliance procedures.
507.171—507.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

§ 507.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 507.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 507.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 507.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 507.104—507.109 [Reserved]

§ 507.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or org nizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 507.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 507.112—507.129 [Reserved]

§ 507.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a

manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 507.131—507.139 [Reserved]

§ 507.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 507.141—507.148 [Reserved]

§ 507.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 507.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 507.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 507.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 507.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 507.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 507.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 507.152—507.159 [Reserved]

§ 507.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 507.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 507.161—507.169 [Reserved]

§ 507.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 507.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, June 23, 1986, as amended at 51 FR 22896, June 23, 1986]

§§ 507.171—507.999 [Reserved]

SUBCHAPTER B—REGULATIONS AFFECTING OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS AND PAS-SENGER VESSELS

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

Subpart A—General

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AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718.

SOURCE: 49 FR 36297, Sept. 14, 1984, unless otherwise noted.

Subpart A—General

§ 510.1 Scope.

(a) This part sets forth regulations providing for the licensing as ocean freight forwarders of persons, including individuals, corporations and partnerships, who wish to carry on the business of freight forwarding. This part also prescribes the bonding requirements and the duties and responsibilities of ocean freight forwarders, regulations concerning practices of
freight forwarders and common carri-
ers, and the grounds and procedure
for revocation and suspension of li-
censes.

(b) Information obtained under thi
part is used to determine the qualifica
tions of freight forwarders and thei
compliance with shipping statutes an
regulations. Failure to follow the pro
visions of this part may result
denial, revocation or suspension of
freight forwarder license. Persons op
erating without the proper licens
may be subject to civil penalties not t
exceed $5,000 for each such violatio
unless the violation is willfully an
knowingly committed, in which ca
the amount of the civil penalty ma
not exceed $25,000 for each violatio
for other violations of the provision
of this part, the civil penalties rang
from $5,000 to $25,000 for each viola
tion (46 U.S.C. app. 1712). Each day
a continuing violation shall constitut
a separate violation.

§ 510.2 Definitions.

The terms used in this part are de
fined as follows:

(a) *Act* means the Shipping Act
1984 (46 U.S.C. app. 1701-1720).

(b) *Beneficial interest* includes a lie
or interest in or right to use, enjo
profit, benefit, or receive any adva
tage, either proprietary or financi
from the whole or any part of a shi
ment of cargo where such intere
arises from the financing of the shi
ment or by operation of law, or b
agreement, express or implied. Th
term *beneficial interest* shall not
clude any obligation in favor of
freight forwarder arising solely
reason of the advance of out-of-pock
expenses incurred in dispatching
shipment.

(c) *Branch office* means any offi
established by or maintained by
under the control of a licensee for t
purpose of rendering freight forwar
ing services, which office is located
an address different from that of t
licensee's designated home office. Th

term does not include a separately incorporated entity.

(d) *Brokerage* refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (m) of this section.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 510.23(c) of this part.

(g) *Freight forwarding fee* means charges billed by a freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing export declarations;

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its Territories, or possessions to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean freight forwarder.

(k) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(l) *Ocean common carrier* means a vessel-operating common carrier but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(m) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Principal*, except as used in Surety Bond Form FMC 59, Rev., refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensee to facilitate the ocean transportation of such property.

(p) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensee's usual charges for such services.

(q) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(r) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(s) *Small shipment* refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

(t) *Special contract* is a contract for freight forwarding services which provides for a periodic lump sum fee.

(u) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

§ 510.3 License; when required.

Except as otherwise provided in this part, a person must hold a valid ocean freight forwarder license in order to perform freight forwarding services, and, except as provided in § 510.4, no person shall perform, or hold out to perform, such services unless such person holds a valid license issued by the Commission to engage in such business. A separate license is required for each branch office that is separately incorporated.

§ 510.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Employee or branch office of licensed forwarder.* An individual employee or unincorporated branch office of a licensed ocean freight forwarder is not required to be licensed in order to act solely for such licensee, but each licensed ocean freight forwarder will be held strictly responsible hereunder for the acts or omissions of any of its employees rendered in connection with the conduct of the business.

(c) *Common carrier.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs on file with the Commission.

(d) *Ocean freight brokers.* An ocean freight broker is not required to be licensed to perform those services specified in § 510.2(m).

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

§ 510.11 Basic requirements for licensing eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean freight forwarding duties in the United States, and the necessary character to render forwarding services; and

(2) It has obtained and filed with the Commission a valid surety bond in conformance with § 510.14.

(b) *Qualifying individual.* The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship*—The applicant sole proprietor.

(2) *Partnership*—At least one of the active managing partners, but all partners must execute the application.

(3) *Corporation*—At least one of the active corporate officers.

(c) *Affiliates of forwarders.* An independently qualified applicant may be granted a separate license to carry on the business of forwarding even though it is associated with, under common control with, or otherwise related to another ocean freight forwarder through stock ownership or common directors or officers, if such applicant submits: (1) A separate application and fee, and (2) a valid surety bond in the form and amount prescribed under § 510.14. The proprietor, partner or officer who is the qualifying individual of one active licensee shall not also be designated the qualifying proprietor, partner or officer of an applicant for another ocean freight forwarder license.

(d) *Common carrier.* A common carrier or agent thereof which meets the requirements of this part may be licensed to dispatch shipments moving on other than such carrier's own bill of lading subject to the provisions of § 510.23(g).

[49 FR 36297, Sept. 14, 1984; 49 FR 38544, Oct. 1, 1984]

§ 510.12 Application for license.

(a) *Application and forms.* Any person who wishes to obtain a license to carry on the business of forwarding shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, a completed application Form FMC-18 Rev. (*Application for a License as an Ocean Freight Forwarder*) and a completed anti-rebate certification in the format prescribed under § 510.25. Copies of Form FMC-18 Rev. may be obtained from the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's offices at other locations. Notice of filing of such application shall be published in the FEDERAL REGISTER and shall state the name and address of the applicant. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $350 made payable to the *Federal Maritime Commission.*

(c) *Rejection.* Any application which appears upon its face to be incomplete or to indicate that the applicant fails to meet the licensing requirements of the Shipping Act of 1984, or the Commission's regulations, shall be returned by certified U.S. mail to the applicant without further processing, together with an explanation of the reason(s) for rejection, and the application fee shall be refunded in full. All other applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Persons who have had their applications returned may reapply for a license at any time thereafter by submitting a new application, together with the full application fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 510.13.

(e) *Changes in fact.* Each applicant and each licensee shall submit to the Commission, in duplicate, an amended Form FMC-18 Rev. advising of any changes in the facts submitted in the original application, within thirty (30) days after such change(s) occur. In the case of an application for a license, any unreported change may delay the processing and investigation of the application and may result in rejection or denial of the application. No fee is required when reporting changes to an application for initial license under this section.

§ 510.13 Investigation of applicants.

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigations may address:

(a) The accuracy of the information submitted in the application;

(b) The integrity and financial responsibility of the applicant;

(c) The character of the applicant and its qualifying individual; and

(d) The length and nature of the qualifying individual's experience in handling freight forwarding duties.

§ 510.14 Surety bond requirements.

(a) *Form and amount.* No license shall be issued to an applicant who does not have a valid surety bond (FMC-59 Rev.) on file with the Commission in the amount of $30,000. The amount of such bond shall be increased by $10,000 for each of the applicant's unincorporated branch offices. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury. Surety Bond Form FMC-59 Rev. can be obtained in the same manner as Form FMC-18 Rev. under § 510.12(a).

(b) *Filing of bond.* Upon notification by the Commission by certified U.S. mail that the applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Tariffs, a surety bond in the form and amount prescribed in § 510.14(a). No license will be issued until the Commission is in receipt of a valid surety bond from the applicant. If more than six (6) months elapse between issuance of the notification of qualification and receipt of the surety bond, the Commission shall, at its discretion, undertake a supplementary investigation to determine the applicant's continued qualification. The fee for such supplementary investigation shall be $100 payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* Should the applicant not file the requisite surety bond within two years of notification, the Commission will consider the application to be invalid.

(c) *Branch offices.* A new surety bond, or rider to the existing bond, increasing the amount of the bond in accordance with § 510.14(a) shall be filed with the Commission prior to the date the licensee commences operation of any branch office. Failure to adhere to this requirement may result in revocation of the license.

(d) *Termination of bond.* No license shall remain in effect unless a valid surety bond is maintained on file with the Commission. Upon receipt of notice of termination of a surety bond, the Commission shall notify the concerned licensee by certified U.S. mail, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license as of the termination date of the bond, unless the licensee shall have submitted a valid replacement surety bond before such termination date. Replacement surety bonds must bear an effective date no later than the termination date of the expiring bond.

§ 510.15 Denial of license.

If the Commission determines, as a result of its investigation, that the applicant:

(a) Does not possess the necessary experience or character to render forwarding services;

(b) Has failed to respond to any lawful inquiry of the Commission; or

(c) Has made any willfully false or misleading statement to the Commission in connection with its application,

A letter of intent to deny the application shall be sent to the applicant by certified U.S. mail, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request fo hearing on the proposed denial withi twenty (20) days after receipt of notification, such hearing shall be grante by the Commission pursuant to i Rules of Practice and Procedure contained in part 502 of this chapter. Otherwise, denial of the application wi become effective and the applican shall be so notified by certified U. mail. Civil penalties for violations the Act or any Commission order, ru or regulation may be assessed in a cordance with part 505 of this chapt in any proceeding on the propos denial of a license or may be compr mised for any such violation when proceeding has not been instituted.

§ 510.16 Revocation or suspension of cense.

(a) *Grounds for revocation.* Exc for the automatic revocation for t mination of a surety bond und § 510.14(d), or as provided § 510.14(c), a license may be revoked suspended after notice and hearing any of the following reasons:

(1) Violation of any provision of Act, or any other statute or Comm sion order or regulation related to c rying on the business of forwarding;

(2) Failure to respond to any law order or inquiry by the Commission

(3) Making a willfully false or leading statement to the Commiss in connection with an application f license or its continuance in effect;

(4) Where the Commission de mines that the licensee is not quali to render freight forwarding servic

(5) Failure to honor the licensee's financial obligations to the Commission, such as for civil penalties assessed or agreed to in a settlement agreement under part 505 of this chapter; or

(6) Failure to file an annual anti-rebate certification as required by § 510.25 and part 582 of this chapter. Any licensed freight forwarder who fails to file an annual anti-rebate certification will be notified by FEDERAL REGISTER publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the licensee does not either establish that the required anti-rebate certification was filed in accordance with § 510.25 and part 582 of this chapter or file the required anti-rebate certification, its license will be suspended until such time as it is reinstated by the Commission after an anti-rebate certification is filed. The license of any freight forwarder who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days notice period will not be suspended; however, the licensee will be subject to civil penalties as provided in part 582 of this chapter. After the forty-five (45) days, any licensee that still does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its license has been suspended.

(b) *Civil penalties.* As provided for in part 505 of this chapter, civil penalties for violations of the Act or any Commission order, rule, or regulation may be assessed in any proceeding to revoke or suspend a license and may be compromised when such a proceeding has not been instituted.

(c) *Notice of revocation.* The Commission shall publish in the FEDERAL REGISTER a notice of each revocation.

[49 FR 36297, Sept. 14, 1984, as amended at 55 FR 35318, Aug. 29, 1990]

§ 510.17 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render forwarding services, any further application within 3 years of the date of the most recent conduct on which the Commission's notice of revocation or denial was based, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

§ 510.18 Issuance and use of license.

(a) *Qualification necessary for issuance.* The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render forwarding services and has filed the required surety bond.

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant be a sole proprietorship, a partnership, or a corporation, and the license will be issued to only one legal entity. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business.

(c) *Use limited to named licensee.* Except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without approval to another person.

§ 510.19 Changes in organization.

(a) The following changes in an existing licensee's organization require prior approval of the Commission:

(1) Transfer of a corporate license to another person;

(2) Change in ownership of an individual proprietorship;

(3) Addition of one or more partners to a licensed partnership;

(4) Change in the business structure of a licensee from or to a sole proprietorship, partnership, or corporation,

whether or not such change involves a change in ownership;

(5) Acquisition of one or more additional licensees, whether for the purposes of merger, consolidation, or control;

(6) Any change in a licensee's name; or

(7) Change in the identity or status of the designated qualifying individual, except as discussed in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean freight forwarder pursuant to the existing license, if the death is reported within thirty (30) days to the Commission and to all principals for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the said executor, administrator, heir(s), or assign(s) shall be made on Form FMC-18 Rev., and shall be accompanied by the transfer fee set forth in paragraph (e) of this section.

(c) *Operation after retirement, resignation, or death of qualifying individual.* When a partnership or corporation has been licensed on the basis of the qualifications of one or more of the partners or officers thereof, and such qualifying individual(s) shall no longer serve in a full-time, active capacity with the firm, the licensee shall report such change to the Commission within thirty (30) days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed ocean freight forwarding experience of other active managing partner(s) or officer(s) who may qualify the licensee. Such qualifying individual(s) must meet the applicable requirements set forth in § 510.11(a) of this part. The licensee may continue to operate as an ocean freight forwarder while the Commission investigates the qualifications of the newly designated partner or officer.

(d) *Incorporation of branch office.* In the event a licensee's validly operating branch office undergoes incorporation as a separate entity, the licensee may continue to operate such office pending receipt of a separate license, provided that:

(1) The separately incorporated entity applies to the Commission for its own license within ten (10) days after incorporation, and

(2) The continued operation of the office is carried on as a *bona fide* branch office of the licensee, under its full control and responsibility, and not as an operation of the separately incorporated entity.

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfer under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Federal Maritime Commission, on Form FMC-18, Rev., together with a processing fee of $100, made payable by money order, certified check, or cashier's check to the *Federal Maritime Commission.*

Subpart C—Duties and Responsibilities of Freight Forwarders; Forwarding Charges; Reports to Commission

§ 510.21 General duties.

(a) *License; name and number.* Each licensee shall carry on the business of forwarding only under the name in which its license is issued and only under its license number as assigned by the Commission. Wherever the licensee's name appears on shipping documents, its FMC license number shall also be included.

(b) *Stationery and billing forms; notice of shipper affiliation.* (1) The name and license number of each licensee shall be permanently imprinted on the licensee's office stationery and billing forms. The Commission may temporarily waive this requirement for good cause shown if the licensee rubber stamps or types its name and FMC license number on all papers and invoices concerned with any forwarding transaction.

(2) When a licensee is a shipper or seller of goods in international commerce or affiliated with such an entity, the licensee shall have the option of: (i) Identifying itself as such and/or, where applicable, listing its affiliates on its office stationery and billing forms, or (ii) including the following notice on such items:

> This company is a shipper or seller of goods in international commerce or is affiliated with such an entity. Upon request, a general statement of its business activities and those of its affiliates, along with a written list of the names of such affiliates, will be provided.

(c) *Use of license by others; prohibition.* No licensee shall permit its license or name to be used by any person who is not a *bona fide* individual employee of the licensee. Unincorporated branch offices of the licensee may use the license number and name of the licensee if such branch offices: (1) Have been reported to the Commission in writing; and (2) are covered by an increased bond in accordance with § 510.14(c).

(d) *Arrangements with forwarders whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no licensee shall, directly or indirectly:

(1) Agree to perform forwarding services on export shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to § 510.16;

(2) Assist in the furtherance of any forwarding business of such person;

(3) Share forwarding fees or freight compensation with any such person; or

(4) Permit any such person, directly or indirectly, to participate, through ownership or otherwise, in the control or direction of the freight forwarding business of the licensee.

(e) *Arrangements with unauthorized persons.* No licensee shall enter into an agreement or other arrangement (excluding sales agency arrangements not prohibited by law or this part) with an unlicensed person so that any resulting fee, compensation, or other benefit inures to the benefit of the unlicensed person. When a licensee is employed for the transaction of forwarding business by a person who is not the person responsible for paying the forwarding charges, the licensee shall also transmit to the person paying the forwarding charges a copy of its invoice for services rendered.

(f) *False or fraudulent claims, false information.* No licensee shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning a forwarding transaction which it has reason to believe is false or fraudulent, nor shall any such licensee knowingly impart to a principal, common carrier or other person, false information relative to any forwarding transaction.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, a licensee shall make available promptly for inspection or reproduction all records and books of account in connection with its forwarding business, and shall respond promptly to any lawful inquiries by such representative.

(h) *Policy against rebates.* The following declaration shall appear on all invoices submitted to principals:

> (Name of firm) has a policy against payment, solicitation, or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984.

§ 510.22 Forwarder and principal; fees.

(a) *Compensation or fee sharing.* No licensee shall share, directly or indirectly, any compensation or freight forwarding fee with a shipper, consignee, seller, or purchaser, or an agent, affiliate, or employee thereof; nor with any person advancing the purchase price of the property or guaranteeing payment therefor; nor with any person having a beneficial interest in the shipment.

(b) *Withholding information.* No licensee shall withhold any information concerning a forwarding transaction from its principal.

(c) *Due diligence.* Each licensee shall exercise due diligence to ascertain the accuracy of any information it imparts to a principal concerning any forwarding transaction.

(d) *Errors and omissions.* Each licensee shall comply with the laws of the United States and any involved State, Territory, or possession thereof, and shall assure that to the best of its knowledge there exists no error, misrepresentation in, or omission from any export declaration, bill of lading, affidavit, or other document which the licensee executes in connection with a shipment. A licensee who has reason to believe that its principal has not, with respect to a shipment to be handled by such licensee, complied with the laws of the United States or any State, Commonwealth or Territory thereof, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other paper which the principal executes in connection with such shipment, shall advise its principal promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(e) *Express written authority.* No licensee shall endorse or negotiate any draft, check, or warrant drawn to the order of its principal without the express written authority of such principal.

(f) *Receipt for cargo.* Each receipt issued for cargo by a licensee shall be clearly identified as *Receipt for Cargo* and be readily distinguishable from a bill of lading.

(g) *Invoices; documents available upon request.* A licensee may charge its principal for services rendered. Upon request of its principal, each licensee shall provide a complete breakout of the components of its charges and a true copy of any underlying document or bill of charges pertaining to the licensee's invoice. The following notice shall appear on each invoice to a principal:

Upon request, we shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.

(h) *Special contracts.* To the extent that special arrangements or contracts are entered into by a licensee, the licensee shall not deny equal terms to other shippers similarly situated.

(i) *Reduced forwarding fees.* No licensee shall render, or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. *Exception*: A licensee may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

(j) *Accounting to principal.* Each licensee shall account to its principal(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of c.o.d. shipments, drafts, letters of credit, and any other sums due such principal(s).

§ 510.23 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear after the name of the shipper, but the licensee must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensee only pursuant to such common carrier's tariff provisions. Where a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the licensee has provided a written certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certification for a period of five (5) years.

(c) *Form of certification.* Where a licensee is entitled to compensation, the licensee shall provide the common carrier with a signed certification which indicates that the licensee has performed the required services that enti tle it to compensation. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. ——, issued by the Federal Maritime Commission and has performed the following services:

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

The required certification may be placed on one copy of the relevant bill of lading, a summary statement from the licensee, the licensee's compensation invoice, or as an endorsement on the carrier's compensation check. Each licensee shall retain evidence in its shipment files that the licensee, in fact, has performed the required services enumerated on the certification.

(d) *Compensation pursuant to tariff provisions.* No licensee, or employee thereof, shall accept compensation from a common carrier which is different than that specifically provided for in the carrier's effective tariff(s) lawfully on file with the Commission. No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Compensation; services performed by underlying carrier; exemptions.* No licensee shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such licensee, performed any of the forwarding services set forth in § 510.2(h) unless such carrier or agent is also a licensee, or unless no other licensee is willing and able to perform such services.

(f) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in § 510.23(c) more than once on the same shipment.

(g) *Licensed non-vessel-operating common carriers; compensation.* (1) A non-vessel-operating common carrier or person related thereto licensed under this part may collect compensation when, and only when, the following certification is made together with the certification required under paragraph (c) of this section:

The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

(2) Whenever a person acts in the capacity of a non-vessel-operating common carrier as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person for such shipment.

(h) A freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

[49 FR 36297, Sept. 14, 1984; 49 FR 38544, Oct. 1, 1984]

§ 510.24 Records required to be kept.

Each licensee shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its business of forwarding. These records must be kept in the United States in such manner as to enable authorized Commission personnel to readily determine the licensee's cash position, accounts receivable and accounts payable. The licensee must maintain the following records for a period of five years:

(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, cancelled checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract with a principal, or modification or cancellation thereof, to which it may be a party. Authorized Commission personnel and *bona fide* shippers shall have access to such records upon reasonable request.

§ 510.25 Anti-rebate certifications.

(a) Every licensed ocean freight forwarder shall file an anti-rebating certificate on or before each December 31.

(b) Every applicant for an ocean freight forwarder license shall file an anti-rebating certificate with its license application. Such certificate shall be valid through December 31 of the year in which the license is granted. Any application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with § 510.12 and part 582 of this chapter shall be rejected.

(c) The anti-rebating certificate shall comply with the requirements of Part 582 of this title, and, except for a certificate filed with a license application, shall apply to the calendar year following the December 31 filing date.

[51 FR 30863, Aug. 29, 1986, as amended at 55 FR 35318, Aug. 29, 1990]

§ 510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
510.12 (Form FMC-18)	3072-0018
510.14	3072-0018
510.15	3072-0018
510.19 (Form FMC-18)	3072-0018
510.21 through 510.25	3072-0018

PART 515—FILING OF TARIFFS BY MARINE TERMINAL OPERATORS

Sec.
515.1 Scope.
515.2 Purpose.
515.3 Persons who must file.
515.4 Filing of tariffs and tariff changes.
515.5 Compliance with this part and other terminal tariff filing requirements.
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515.7 Exculpatory tariff provisions.
515.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 841a, 1709, 1714 and 1716.

SOURCE: 49 FR 36304, Sept. 14, 1984, unless otherwise noted.

§ 515.1 Scope.

This part sets forth rules and regulations for the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

§ 515.2 Purpose.

The purpose of this part is to enable the Commission to discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices. Compliance is mandatory and failure to file the required tariffs may result in a penalty of not more than $5,000 for each day such violation continues. Additionally, if willful and knowing, the Shipping Act of 1984 provides a civil penalty of not more than $25,000 for each day a violation continues.

§ 515.3 Persons who must file.

Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, every person other than the Department of Defense (including the military department and all agencies of the Department of Defense), carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in § 515.1, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal sevices not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file in duplicate with the Bureau of Tariffs, Federal Maritime Commission, and shall keep open for inspection at all its places of business, a schedule or tariff showing all its rates, charges, rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities, except that rates and charges for terminal services performed for water carriers pursuant to negotiated contracts, and for storage of cargo and services incidental thereto by public warehousemen pursuant to storage agreements covered by issued warehouse receipts need not be filed for purposes of this part.

§ 515.4 Filing of tariffs and tariff changes.

Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in § 515.3.

§ 515.5 Compliance with this part and other terminal tariff filing requirements.

Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, shall not be relieved of such requirements by this part. Marine Terminal Operators who file tariffs with the Interstate Commerce Commission pursuant to statute or rule of that Commission may satisfy the requirements of this part by filing with the Federal Maritime Commission a copy of any such tariff filed with the Interstate Commerce Commission.

§ 515.6 Definitions.

(a) The definitions of terminal services set forth in paragraph (d) of this section shall be set forth in tariffs filed pursuant to this part except that other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs.

(b) These definitions shall apply to *port terminal facilities* which are defined as one or more structures comprising a terminal unit, and include, but are not limited to wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

(c) For the purpose of this section, *point of rest* means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

(d) *Definitions of terminal services.* (1) *Dockage* means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

(2) *Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service.

(3) *Free time* means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage changes immediately prior to the unloading or subsequent to the discharge of such cargo on or off the vessel.

(4) *Wharf demurrage* means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time unless arrangements have been made for storage.

(5) *Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made.

(6) *Handling* means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle.

(7) *Loading and unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility.

(8) *Usage* means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

(9) *Checking* means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

(10) *Heavy lift* means the service of providing heavy lift cranes and equipment for lifting cargo.

[49 FR 36305, Sept. 14, 1984; 49 FR 38544, Oct. 1, 1984]

§ 515.7 Exculpatory tariff provisions.

No terminal tariff shall contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

[51 FR 46670, Dec. 24, 1986]

§ 515.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
515.3 through 515.5	3072-0002

PART 520—FILING OF TARIFFS BY TERMINAL BARGE OPERATORS IN PACIFIC SLOPE STATES

AUTHORITY: 5 U.S.C. 553; secs. 3, 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 804, 817(a) and 841(a)); sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844); and secs. 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716).

NOTE: In accordance with 44 U.S.C. 3506(c)(5), any information request or requirements in this part is not subject to the requirements of sec. 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

§ 520.1 Scope.

(a) The rules and regulations set forth in this part cover the filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States.

(b) Terminal barge operators moving containers or containerized cargo by barge between points in the Continental United States shall file a schedule of their rates, charges and services solely with the Federal Maritime Commission where:

(1) The cargo is moving between a point in a foreign country or a noncontiguous State, territory, or possession and a point in the United States.

(2) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading.

(3) Such terminal operator is a Pacific Slope State municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service on January 2, 1975.

(4) Such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service.

(c) The terminal operator providing such service shall be subject to the provisions of the Shipping Act, 1916 and/or the Shipping Act of 1984.

[49 FR 36306, Sept. 14, 1984]

§ 520.2 Tariff filing requirements.

(a) Terminal barge operators subject to this part shall comply with the tariff filing requirements of part 580 of this chapter with respect to the publication of rates, charges and services for cargo moving in the foreign and/or domestic offshore commerce of the United States.

(b) Terminal barge operators, while exempt from the tariff filing form requirements of part 550 of this chapter with respect to their operations as water carriers carrying cargo in the domestic offshore trades, shall comply with all other required regulations, where applicable.

(c) Tariff(s) filed pursuant to § 520.2(a) shall specifically provide that the rates charged are based upon factors normally considered by a regular commercial operator in the same service.

[49 FR 36306, Sept. 14, 1984]

PART 525—FREE TIME AND DEMURRAGE CHARGES ON IMPORT PROPERTY APPLICABLE TO ALL COMMON CARRIERS BY WATER

AUTHORITY: 5 U.S.C. 553; secs. 17 and 43 of the Shipping Act, 1916 (46 U.S.C. App. 816, 841a); secs. 10 and 17 of the Shipping Act of 1984 (46 U.S.C. App. 1709 and 1716).

NOTE: In accordance with 44 U.S.C. 3506(c)(5), any information request or requirements in this part is not subject to the requirements of sec. 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

§ 525.1 Free time and demurrage charges at the port of New York.

(a) Free time of five days (exclusive of Saturdays, Sundays, and legal holidays), computed from the start of business on the first day after complete discharge of the vessel, is adequate free time on import property at New York under present conditions.

(b) Free time on import property at New York shall not be less than five days, except on property of such a special nature as to require earlier removal because of local ordinances or other governmental regulations, or because piers are not equipped to care for such property for such period, or except as the Commission may hereafter direct.

(c) Except as provided in §§ 530.3(e)(2), 530.4(e) and 530.4(g) of this chapter, where a carrier is for any reason, unable, or refuses, to tender cargo for delivery during free time, free time must be extended for a period equal to the duration of the carrier's disability or refusal. If such condition arises after the expiration of free time, either no demurrage or first period demurrage, whichever is specified in the appropriate tariff, will be charged for a period equal to the duration of the carrier's inability or refusal.

(d) Where a consignee is prevented from removing its cargo by factors beyond its control (such as, but not limited to, longshoremen's strikes, trucking strikes or weather conditions) which affect an entire port area or a substantial portion thereof, and when a consignee is prevented from removing its cargo by a longshoremen's strike which affects only one pier or less than a substantial portion of the port area, carriers shall (after expiration of free time) assess demurrage against imports at the rate applicable to the first demurrage period, for such time as the inability to remove the cargo may continue. Every departure from the regular demurrage charges shall be reported to the Commission.

(e) The Commission makes no finding approving or disapproving demurrage rates presently effective as to import property at the Port of New York.

(f) Following a longshoremen's strike of five (5) days or more:

(1) Free time shall be extended for a period not less than five (5) days (exclusive of Saturdays, Sundays, and legal holidays) beyond the time at which it would normally terminate, for cargo which was in a free time period at the commencement of the longshoremen's strike.

(2) First period demurrage shall be extended for a period not less than five (5) calendar days beyond the time at which it would normally terminate, for cargo which was subject to first period demurrage at the commencement of the longshoremen's strike.

(g) The extensions set forth in paragraphs (f)(1) and (f)(2) of this section, shall apply only: (1) If the cargo is actually picked up within such extended time or (2) if, pursuant to an appointment system adopted by both carriers and consignees, cargo is picked up within twenty-four (24) hours of advance notification that cargo is available for pickup and readily accessible, in which latter event, time shall not be extended more than twenty-four (24) hours beyond the additional free time or demurrage period.

[49 FR 36306, Sept. 14, 1984]

PART 530—TRUCK DETENTION AT THE PORT OF NEW YORK

Sec.

530.1 General provisions.
530.2 Documentation.
530.3 Terminals operating on appointment system.
530.4 Terminals operating a non-appointment system.
530.5 Combination non-appointment/appointment system.
530.6 Computation of time.
530.7 Penalties.
530.8 Submission of claims for penalties.
530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
APPENDIX A TO PART 530—NEW YORK/NEW JERSEY PORT DISTRICT
APPENDIX B TO PART 530—MOTOR CARRIER PREFERENCE SLIP

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. App. 816, 841a, 1709 and 1716.

SOURCE: 49 FR 36307, Sept. 14, 1984, unless otherwise noted.

§ 530.1 General provisions.

(a) *The Port of New York* is that area designated as *The Port District* on the map (appendix A).

(b) For purposes of this part, a terminal operator is any person who receives cargo from motor carriers and/or delivers cargo to motor carriers in connection with transportation by common carrier by water, excluding persons who operate marine terminal facilities controlled by the Department of Defense including the military department and all agencies of the Department of Defense.

(c) Motor carriers (common, contract, or private), terminal operators, including steamship companies acting as terminal operators, and steamship companies whose action or inaction otherwise impedes expeditious pickup and delivery of cargo by motor carriers at marine terminal facilities within the Port of New York, shall be subject to the provisions established by terminal operators in accordance with this part, which provisions shall be reflected in the tariff of each such terminal operator.

(d) Importers and exporters, or motor carriers or other agents of importers or exporters, and terminal operators at marine terminal facilities in the Port of New York, shall be entitled to receive remuneration in accordance with the provisions of this part.

(e) The person responsible for operating each marine terminal facility within the Port of New York shall identify itself to the Federal Maritime Commission not more than 10 days after the effective date of this part and shall thereafter promptly notify the Commission of any change in responsibility. Based thereon, the Federal Maritime Commission (Commission) will publish and maintain a current list identifying, as to each such marine terminal facility, the party responsible for receipt and settlement of claims arising under this part.

(f) All communications to the Federal Maritime Commission required by this part shall be directed to the Federal Maritime Commission, Office of the Secretary, 1100 L Street NW., Washington, DC 20573.

(g)(1) Except as provided in paragraph (g)(2) of this section, no penalty shall be imposed upon a terminal operator under this part if receipt or delivery of cargo at a marine terminal facility is prevented or delayed by strike or work stoppage, act of God, fire, serious accident, or severe or unusual weather condition. The Commission shall be notified in writing by the party claiming the existence of the condition who shall specify the date and time of commencement and termination of any such strike, work stoppage, or severe or unusual weather or other condition.

(2) No terminal operator shall be absolved from liability under this part for delays resulting from inadequate or insufficient labor, and/or equipment, other than reasonable delays necessary to obtain special equipment required for handling unusual cargo on a non-appointment basis.

(h) Terminal operators shall not be liable for delays due to United States Government regulations; nor shall terminal operators be liable for time consumed by receipt or delivery of cargo by marks other than by bill of lading, provided at the request of the shipper, consignee or motor carrier.

(i) Steamship companies responsibile for house-to-house movement of containers, i.e., containers moving as a unit from origin to destination, are responsible under this part for delay occasioned by lack of sufficient chassis, or unavailability, action or inaction of their container inspection personnel. For purposes of this part, *containers* shall include empty as well as stuffed containers.

(j) Disputes concerning liability under any provisions of this part shall be settled by an impartial Adjudicator selected by the Commission.

(k) Terminal operators are not required to deliver cargo to motor carriers prior to the time that the ocean vessel which transported said cargo is fully discharged. If a terminal operator exercises the option of delivering cargo to motor carriers prior to the time that the ocean carrier which transported said cargo is fully discharged, the terminal operator shall notify the consignee or its designated agent that the cargo is on the pier, at its place of rest, and segregated by bill of lading, and shall identify the terminal operator employee giving such notification.

(l) Marine terminal facilities in the Port of New York shall be operated in accordance with the appointment, non-appointment, or combination appointment/non-appointment procedures established by the terminal operator in accordance with this part. Each terminal operator shall identify in its respective tariff whether its marine terminal facility will be operated on an appointment, non-appointment, or combination appointment/non-appointment basis. Said tariff shall incorporate the specific procedures applicable at each such marine terminal facility, which procedures shall comply with the provisions of this part, be prominently displayed at the marine facility, and shall be modified on not less than 30 days' notice.

(m) Compliance is mandatory and failure of terminal operators or motor carriers to follow the provisions of this part may result in the assessment of penalties as specified in § 530.7.

§ 530.2 Documentation.

(a)(1) Delivery orders shall not be mailed or delivered to terminal operators, nor mailed or delivered to steamship companies for receipt on behalf of terminal operators, prior to arrival of motor carrier vehicles at marine terminal facilities. Dock receipts may be lodged with terminal operators or steamship companies for receipt on behalf of terminal operators prior to arrival of motor carrier vehicles at marine terminal facilities. Upon arrival at marine terminal facilities, motor carrier vehicle operators shall have physical possession of delivery orders required by this part, and shall either have physical possession of dock receipts required by this part or shall have had said dock receipts lodged with the terminal operator or steamship company in accordance with the above-described procedure. Motor carrier vehicles having physical possession of delivery orders or dock receipts immediately shall be issued a sequentially numbered and time-stamped gate pass by order of arrival. When dock receipts are lodged with the terminal operator or steamship company, the sequentially numbered and time-stamped gate pass immediately shall be issued upon tender of the dock receipt to the gateman by the motor carrier vehicle driver. The sequential number and all time stamps and notations recorded on the gate pass and any other arrival document shall be recorded on the copy of the delivery order or dock receipt retained by the motor carrier. Motor carrier vehicles not complying with the requirements of this paragraph shall be denied entry to the marine terminal facility.

(2) Motor carriers shall be permitted to receive cargo on Open Delivery Orders, i.e., single delivery orders covering multiple truckloads or shipments, and deliver cargo on Open Dock Receipts, i.e., single dock receipts covering multiple truckloads or shipments, upon presenting to the terminal operator, subsequent to receipt or delivery of the initial load, satisfactory evidence of authorization to effect receipt or delivery of the remaining truckloads or shipments, as established by the terminal operator and published in its tariff.

(b) Dock receipts required as full and complete documentation for receipt of export cargo shall include the following information:

(1) Name of the motor carrier.

(2) Name of forwarding agent. (If none, insert "none".)

(3) Shipper.

(4) Name of vessel.

(5) Pier, berth, or area designated for receipt of cargo.

(6) Port of discharge.

(7) Container identification and seal number. (On full container loads.)

(8) Booking number.

(9) Cargo to be held on dock should be so indicated in space provided for vessel name.

(10) Marks, number of packages, commodity, cube and weight.

(11) An original and three copies of the dock receipt authorized by the steamship line that is to receive the cargo must be tendered to the terminal operator, one copy of which shall be returned to and retained by the motor carrier in accordance with § 530.2(a)(1).

(c) Delivery order required as full and complete documentation for the delivery of import cargo shall provide the following information:

(1) Name and address of party issuing delivery order.

(2) Address of terminal.

(3) Name and address of motor carrier making pickup.

(4) Vessel name.

(5) Voyage number or estimated date of arrival.

(6) Bill of Lading number.

(7) Port of Lading.

(8) City of destination. (On full container loads.)

(9) Container identification number. (On full container loads.)

(10) Booking number. (On receipt of empty containers.)

(11) Marks, number of packages, commodity, cube and weight. When partial lots are to be delivered, they should be identified by marks.

(12) Date free time expires.

(13) Date through which demurrage is paid/guaranteed after free time has expired.

(14) An original and two copies of the delivery order, the original legibly signed in ink, with the name of the

signer typed below the signature, shall be tendered to the terminal operator, one copy of which shall be returned to and retained by the motor carrier in accordance with paragraph (a)(1) of this section.

(d)(1) Terminal operators shall not honor delivery orders with strikeouts or other changes to the original.

(2) If a motor carrier named in an original delivery order substitutes another motor carrier in its place, the motor carrier named in the original delivery order shall provide a turnover order to the second carrier containing all information required by the original delivery order. Both the original delivery order and the turnover order must be presented to the terminal operator by the motor carrier requesting delivery of cargo. Upon written request, in accordance with procedures established by the terminal operator and published in its tariff, special arrangements may be made to accommodate general agency situations.

(e) If a motor carrier presents documents to the terminal operator which do not contain all information required by this part, or which are complete but contain inaccurate information, said motor carrier shall be required to surrender its gate pass and shall be denied service; or, at the request of said motor carrier, the terminal operator may correct or complete the deficient document and service said motor carrier in accordance with this part.

(f) If documents are rejected by the terminal operator, or service is refused for any other reason, the terminal operator shall provide the motor carrier written explanation, time-stamped, of the deficiencies in documentation or other reason(s) for refusal of service, and shall attach thereto a copy of the deficient document, if any.

(g) Paragraph (e) of this section shall not be applicable if documents are incorrect because of substitution of one vessel for another, redocking of a vessel from a scheduled pier to another, or change in consignment of an export shipment from a scheduled vessel to another due to an early closeout of the scheduled vessel or other such rescheduling for the convenience of the steamship company or terminal operator. Delay occasioned in such circumstances shall be included in the computation of time for purposes of this rule and chargeable to the party responsible for such change.

§ 530.3 Terminals operating on appointment system.

Subject to the following provisions of this section, terminal operators shall establish the basis upon which appointments will be available and shall publish in their tariffs reasonable methods and procedures for booking appointments.

(a)(1) Except for good cause, all requests for appointments shall be granted. If a request for an appointment is not granted, the terminal operator shall record the request and reason for refusal.

(2) Appointments, when granted, shall be identified by sequentially assigned numbers. The terminal operator shall record the date and time of requests for appointments, the name of the person making the requests; the date, time and identification number of scheduled appointments; and shall identify the terminal operator employee granting the appointment.

(b) Appointments to receive delivery of cargo shall not be granted by terminal operators unless and until a freight release covering subject cargo has been provided by the steamship company. Appointments shall be granted only if the terminal operator is advised of the nature, type and quantity of cargo to be delivered or received. If, because of the size, weight or shape of the cargo, special equipment is required, the terminal operator shall so advise the motor carrier at the time the appointment is granted, and the motor carrier shall advise the terminal operator of the type of *rolling stock* which it will employ to effectuate the interchange of cargo.

(c)(1) Gate passes shall be issued to motor carriers by order of arrival at the marine terminal facility. Motor carriers arriving after the time of a scheduled appointment shall be deemed to have missed the appointment and may be denied service.

(2) Except where a terminal operator has arranged for delivery of cargo

on the last day of free time, or on the first or second day of demurrage, in accordance with paragraph (e)(2) of this section, motor carriers may cancel appointments (without penalty), provided the terminal operator is given three (3) working hours' notice of said cancellation.

(d)(1) Upon receipt of a gate pass issued pursuant to paragraph (c)(1) of this section, motor carrier personnel holding dock receipts or other satisfactory evidence of authorization to effect delivery or cargo shall proceed immediately to the receiving clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for unloading.

(2) Upon receipt of a gate pass issued pursuant to paragraph (c)(1) of this section, motor carrier personnel holding delivery orders or other satisfactory evidence of authorization to receive delivery of cargo shall proceed to the Bureau of Customs for completion of required procedures, and thereafter, shall immediately proceed to the delivery clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for loading.

(e)(1) See § 525.1(c) of this chapter for provisions regarding extension of free time.

(2) At full-appointed terminals, if an appointment is not available as requested, an appointment shall be granted within 72 hours (three business days) of said request, except as provided by paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) *Cargo permitted 5 days' free time—Extension of free time.* (A) If an appointment is requested at least 48 hours prior to the expiration of free time, the terminal operator shall arrange to deliver cargo prior to expiration of free time, or extend free time until an appointment is granted.

(B) If an appointment is requested less than 48 hours—but more than 24 hours—prior to expiration of free time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the first working day of demurrage for which first demurrage day the cargo shall be liable, or, after said first demurrage day, cargo shall assume non-demurrage status until an appointment is granted.

(C) If an appointment is requested less than 24 hours prior to expiration of free time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the second working day of demurrage for which two (2) demurrage days the cargo shall be liable, or, after said two (2) demurrage days, cargo shall assume non-demurrage status until an appointment is granted.

(ii) *Cargo permitted 2 or 3 days' free time—Extension of free time.* (A) If an appointment is requested at least 24 hours prior to expiration of free time, the terminal operator shall arrange to deliver cargo prior to expiration of free time or extend free time until an appointment is granted.

(B) If an appointment is requested less than 24 hours prior to expiration of time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the first working day of demurrage for which first demurrage day the cargo shall be liable, or, after said first demurrage day, cargo shall assume non-demurrage status until an appointment is granted.

§ 530.4 Terminals operating a non-appointment system.

(a) Each business day shall be divided into a number of *service periods* (for example, periods commencing at 8 a.m., 10 a.m., 1 p.m., 3 p.m.) as scheduled by the terminal operator according to the nature and capabilities of the particular facility.

(b) Motor carriers arriving at marine terminal facilities shall be issued sequentially numbered time-stamped gate passes by order of arrival, valid for entry to the terminal facility at the time of commencement of the service period indicated thereon.

(c) Upon receipt of a gate pass issued pursuant to paragraph (b) of this section, motor carrier personnel holding dock receipts or other satisfactory evidence of authorization to effect delivery of cargo shall proceed immediately to the receiving clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for unloading.

(d) Upon receipt of a gate pass issued pursuant to paragraph (b) of this section, motor carrier personnel holding delivery orders or other satisfactory evidence of authorization to receive delivery of cargo shall proceed to the Bureau of Customs for completion of required procedures and thereafter immediately proceed to the delivery clerk of the terminal operator, who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for loading.

(e) A motor carrier entitled to a gate pass scheduling service for a later service period, but unwilling to wait for that service, may elect, not more than 30 minutes after issuance of said gate pass, to receive a preference slip (Appendix B), entitling said motor carrier to service on the next business day as specified thereon. However, free time will not be extended if cargo is on the last day of free time, nor will collection of demurrage charges be suspended.

(f) Motor carriers arriving at a marine terminal facility after the capacity of said facility has been reached may be turned away, but shall be given preference for service on the next business day according to the order in which they arrived and were turned away. Motor carriers turned away under these circumstances shall be issued a preference slip (Appendix B), sequentially numbered, which shall assure preference for service on the next business day and, where cargo is on the last day of free time, create a one-day extension of free time, or suspend collection of demurrage charges for one day as to cargo already on demurrage. The preference slip shall be attached to the gate pass when said gate pass is issued and all notations recorded on the preference slip shall be duplicated in the motor carrier's copy of the delivery order or dock receipt.

(g) If, at the commencement of its scheduled service period, a motor carrier is not available to receive cargo which is on the last day of free time, and because of the unavailability of said motor carrier, the terminal operator is unable to provide service on that day, there shall be no extension of free time.

(h) If all vehicles scheduled for a service period are discharged prior to the end of that period, the motor carrier available and holding the next sequenced gate pass shall be served.

(i) It shall be the responsibility of the motor carrier to determine from the terminal operator whether cargo to be delivered to said motor carrier is on the pier, at its place of rest, and segregated by bill of lading.

§ 530.5 Combination non-appointment/appointment system.

(a) An express line or non-appointment line may be established in conjunction with an appointment system in such a manner as the terminal operator determines best suits the needs of the particular facility.

(b) All rules applicable to non-appointment facilities (§ 530.4) shall be applicable to the non-appointment portion of a combination non-appointment/appointment terminal operation.

(c) If a motor carrier attempts to make an appointment at a facility operating a combination system, and no appointment is available, and then said motor carrier seeks service as a non-appointment vehicle, said motor carrier shall be treated as a non-appointment vehicle for purposes of extension of free time.

§ 530.6 Computation of time.

(a) Validation time is: (1) Time of issuance of a gate pass upon a motor carrier's arrival at a marine terminal facility or (2) if, upon arrival, a motor carrier is scheduled for a later service period, the time of commencement of that scheduled service period, or (3) if a motor carrier is issued a preference slip pursuant to § 530.4(e) or § 530.4(f), the time scheduled thereon.

(b) Time for purposes of this part shall accrue from validation or appointment time. Delay demonstrated by the terminal operator to be due to United States Government regulations, action or inaction of motor carrier personnel, or other such cause, shall be excluded from computation of time. Time elapsed, if any, between appointment or validation time and presentation of documents to the delivery or receiving clerk shall be presumed to be due to such cause.

§ 530.7 Penalties.

(a) A terminal operator who refuses to serve a motor carrier after rejecting, for lack of full and complete documentation, a delivery order or dock receipt which does contain the information required by this part, shall be subject to a penalty of $30.

(b) If a motor carrier fails to meet a scheduled appointment at a marine terminal facility, said motor carrier shall be subject to a charge of $15. If, pursuant to § 530.3(b) a motor carrier is advised that special equipment will be required and the motor carrier fails to meet said appointment, the motor carrier shall be subject to a charge of $30.

(c) If, pursuant to § 530.2(e), a terminal operator completes or corrects deficient documents presented by a motor carrier, a charge of $15 shall be assessed against said motor carrier.

(d) If, contrary to § 530.3(b) a freight release covering subject cargo has not been authorized prior to a scheduled appointment, the terminal operator that granted said appointment shall be assessed a penalty of $30.

(e) If, pursuant to § 530.1(k) or a request under § 530.4(i) a terminal operator notifies a motor carrier that cargo is on the pier, at its place of rest, and segregated by bill of lading, and cargo is not on the pier, at its place of rest, and segregated by bill of lading, when the motor carrier attempts to obtain said cargo, the terminal operator shall be subject to a penalty of $30.

(f) *Time allowances*—(1) *Containers handled as a single unit.* If service is not completed within the following times, penalty charges will accrue against the terminal operator at a rate or $8.00 per 15 minutes, or any fraction thereof, in excess of these times.

Appointment	75 minutes
Non-appointment	120 minutes

(2) *Non-containerized cargo.* When vehicles are loaded by the terminal operator, or unloaded by the terminal operator at the request of the motor carrier, within the time periods set forth below, there will be no penalty. If a vehicle is not loaded or unloaded within the following time periods, penalty charges will accrue against the terminal operator at a rate of $8.00 per 15 minutes, or any fraction thereof, in excess of these times.

(i) *Non-Appointment Vehicles:*

0 to 5,000 pounds	210 minutes
5,001 to 10,000 pounds	240 minutes
10,001 to 15,000 pounds	270 minutes
15,001 to 30,000 pounds	285 minutes
Over 30,000 pounds	300 minutes

(ii) *Appointment Vehicles:*

2,000 pounds or less	90 minutes
2,001 to 5,000 pounds	120 minutes
5,001 to 10,000 pounds	150 minutes
10,001 to 15,000 pounds	180 minutes
15,001 to 20,000 pounds	210 minutes
20,001 to 25,000 pounds	240 minutes
Over 25,000 pounds	270 minutes

(g) When freight is unloaded by the driver or other personnel of the motor carrier and unloading is not completed within the times prescribed by paragraph (f) of this section, as computed from the time that the vehicle is spotted at a place convenient for unloading, the terminal operator shall be entitled to a penalty payment of $8.00 for each 15 minute period or any fraction thereof in excess of the specified time, unless the delay is demonstrated by the motor carrier to have been occasioned by the action or inaction of the terminal operator.

(h) A motor carrier admitted to a marine terminal facility for loading or unloading—or holding an appointment for loading or unloading—shall be completely loaded or unloaded prior to the close of that business day. If the motor carrier is not completely loaded or unloaded when the terminal closes on that business day, time for purposes of this part shall accrue only while the terminal is conducting operations. In addition:

(1) Motor carriers holding appointments shall be entitled to a penalty payment of $30 from the terminal operator whether the shutout of the vehicle was due to refusal of management to authorize overtime, or labor's refusal to work overtime.

(2) Non-appointment vehicles shall be entitled to a penalty payment of $30 from the terminal operator if the shutout of the vehicle was due to refusal of management to authorize overtime. If the shutout results from labor's refusal to work overtime, the terminal operator shall not be subject to a penalty.

(3) Management shall be presumed to have refused to authorize overtime, unless the terminal operator establishes otherwise.

[49 FR 36307, Sept. 14, 1984, as amended at 52 FR 2704, Jan. 26, 1987]

§ 530.8 Submission of claims for penalties.

(a) All communication required by this section shall be via certified mail; return receipt requested.

(b) Any person claiming payments under this section shall file a written claim with the terminal operator or motor carrier against whom said claim is made.

(c)(1) Claims shall be filed within forty-five (45) calendar days from the date on which the claim arose or said claim shall be barred. The party against whom claim is made shall within twenty (20) calendar days from receipt of said claim make payment thereon or reject. In rejecting a claim, the terminal operator or motor carrier shall set forth the reason or reasons for said rejection and shall provide available documentation substantiating said rejection. Claims rejected because they do not contain sufficient information may be resubmitted no later than twenty (20) days from receipt of rejection.

(2) Rejected claims may be submitted for review within twenty (20) days of receipt of rejection to the Adjudicator who will affirm or reverse the rejection of claims within 30 days of receipt of the request for review. All decisions of said Adjudicator shall be final and binding.

(d)(1) Claims submitted by motor carriers, or importers or exporters on whose behalf motor carriers act, shall include the motor carrier's copy of the applicable delivery order or dock receipt, any other relevant document, a brief, but complete description of the facts giving rise to the claim, and a statement of the amount claimed.

(2) Claims filed by terminal operators shall include the terminal operator's copy of the applicable delivery order or dock receipt, a copy of the gate pass and any other arrival documents issued, copies of all other relevant documents, a brief explanation of the facts giving rise to the claim, and a statement of the amount claimed.

(e)(1) If the party identified as the terminal operator at a marine terminal facility under § 530.1(e) rejects a claim pursuant to § 530.1(l) or § 530.2(g), or otherwise denies a claim on the ground that the delay was caused by the steamship company, the original claim and a statement of the reasons for rejection shall be forwarded within seven days to the steamship company alleged by the terminal operator to be liable for the claim, copy to the claimant.

(2) The steamship company shall pay or reject the claim within twenty (20) calendar days from receipt thereof.

(3) If the claim is rejected by the steamship company, the claimant may submit both rejections to the Adjudicator who shall review the rejection of the claim by both parties and determine liability as between the two.

§ 530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

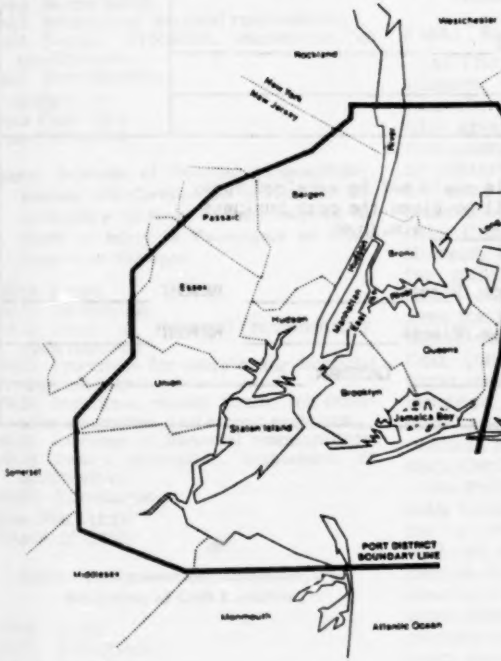
Section	Current OMB Control No.
530.1 through 530.3	3072-0010
530.8	3072-0010

Section	Current OMB Control No.

Appendix A to 46 CFR
Part 530

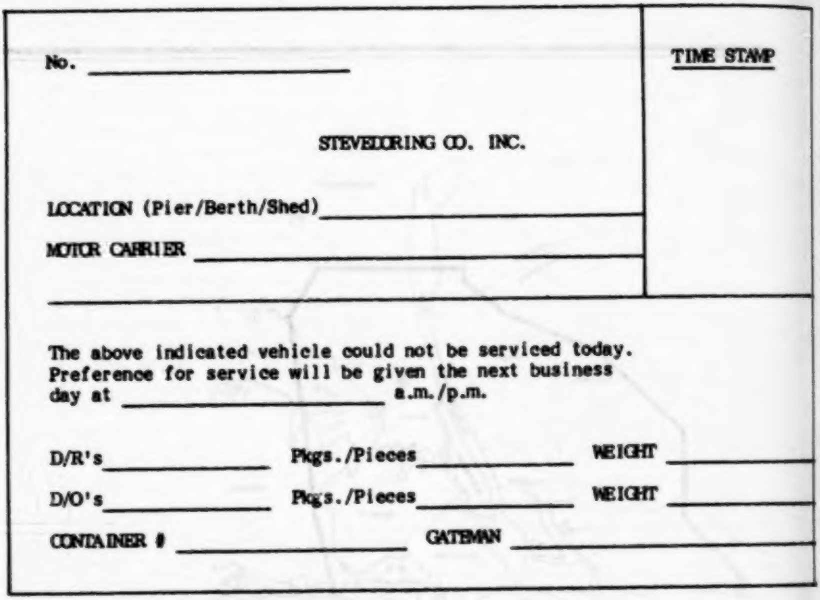
(From 1981 "New York Port
Handbook")

New York/New Jersey Port District


Westchester
Rockland
New York
New York
New Jersey
River
Bergen
Passaic
Island
Long
Bronx
Hudson
Essex
Hudson
Manhattan
East
River
Nassau
Queens
Union
Brooklyn
Jamaica Bay
Staten Island
Somerset
PORT DISTRICT
BOUNDARY LINE
Middlesex
Monmouth
Atlantic Ocean

Appendix B to 46 CFR Part 530

Motor Carrier Preference Slip
(See § 530.4)



No. ____________________

TIME STAMP

STEVEDORING CO. INC.

LOCATION (Pier/Berth/Shed)____________________

MOTOR CARRIER ____________________

The above indicated vehicle could not be serviced today. Preference for service will be given the next business day at ____________________ a.m./p.m.

D/R's____________ Pkgs./Pieces____________ WEIGHT ____________

D/O's____________ Pkgs./Pieces____________ WEIGHT ____________

CONTAINER # ____________ GATEMAN ____________

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Insurance, guaranties, escrow accounts, and self-insurance.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
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Form FMC-131
Form FMC-132A
Form FMC-133A

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

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540.23 Procedure for establishing financial responsibility.
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Form FMC-132B
Form FMC-133B

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540.31 Definitions.
540.32 Procedure.
540.33 Petition for remission or mitigation of penalty.
540.34 Settlement; execution of agreement form.
540.35 Referral to Department of Justice.
540.36 Payment of penalties.
540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A to Part 540—Example of Settlement Agreement To Be Used Under 46 CFR 540.30—540.36
Appendix B to Part 540—Example of Promissory Note To Be Used Under 46 CFR 540.36

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

Source: 49 FR 36313, Sept. 14, 1984, unless otherwise noted.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

§ 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this part may result in denial of an application for a certificate. Vessels operating without the proper certificate may be denied clearance and their owners may also be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d and 817e).

§ 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

(j) *Insurer* means any insurance company, underwriter, corporation, or association or underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(k) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC-131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation. Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance) shall be accompanied by a filing fee remittance of $1,600.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 *Surety Bonds*) of the following methods:

(a) Filing with the Commission evidence of insurance, issued by an insurer, providing coverage for indemnification of passengers in the event of the nonperformance of water transportation.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office, in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation.

(c) Filing with the Commission a guaranty on Form FMC-133A, by a guarantor acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in the introductory text of this section, except that the Commission, for good cause shown, may waive the requirement as to the amount of working capital. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus, except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC-132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given or a satisfactory bond has been provided, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§ 540.9 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132A), guaranty (Form FMC-133A), and application (Form FMC-131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail at its last known address on file with the Commission.

(f) [Reserved]

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (a) or (b).

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance), and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period. In addition, the statements will be due within 30 days after the close of every such 6-month period.

(i) [Reserved]

(j) The amount of: (1) Insurance as specified in § 540.5(a), (2) the escrow account as specified in § 540.5(b), (3) the guaranty as specified in § 540.5(c), or (4) the surety bond as specified in § 540.6, shall not be required to exceed 15 million dollars (U.S.).

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Pub. L. 89-777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990]

EFFECTIVE DATE NOTE: At 55 FR 34568, Aug. 23, 1990, corrected at 55 FR 35983, Sept. 4, 1990, § 540.9 was amended as follows: In paragraph (h), the third sentence was amended by removing the period and adding, ", and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period." Also, paragraph (j)(4) was amended by replacing "10" with "15" at the end of the paragraph, effective February 19, 1991.

FORM FMC-131

FEDERAL MARITIME COMMISSION

Washington, DC 20573

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY

In compliance with the provisions of Pub. L. 89-777 and 46 CFR part 540, application is hereby made for a Certificate of Financial Responsibility (check one or both as applicable):

[ ] for indemnification of passengers for nonperformance. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

[ ] to meet liability incurred for death or injury to passengers or other persons. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

Instructions

Submit two (2) typed copies of the application to the Secretary, Federal Maritime Commission, Washington, DC 20573. The application is in four parts: Part I—General; Part II—Performance; Part III—Casualty and Part IV—Declaration. Applicants must answer all questions in part I and part IV, then parts II and/or part III as appropriate. Instructions relating to part II and part III are contained at the beginning of the respective part. If the information required to be submitted under 46 CFR part 540 has been previously submitted under other rules and regulations of the Commission, state when and for what reason such information was submitted. If previously submitted, it is not necessary to resubmit. If additional space is required, supplementary sheets may be attached.

PART I—GENERAL

Answer All Questions

1. (a) Legal business name:

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name or names used:

2. (a) State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons (whether incorporated or not), or as a receiver, trustee, or other liquidating agent, and describe current business activities and length of time engaged therein.

(b) If a corporation, association, joint stock company, business trust, or other organization, give:

Name of State or country in which incorporated or organized.

Date of the incorporation or organization.

(c) If a partnership, give name and address of each partner:

3. Give following information regarding any person or company controlling, controlled by, or under common control with you (answer only if applying as a self-insurer under part II or part III).

Name	Address	Business and relationship to you

4. In relation to the passenger transportation engaged in by you to or from U.S. ports:

Do you own all the vessels? [ ] Yes [ ] No (If "No" indicate the nature of the arrangements under which those not owned by you are available to you (e.g., bareboat, time, voyage, or other charter, or arrangement).)

5. Name of each passenger vessel having accommodations for 50 or more passengers and embarking passengers at U.S. ports:

Name	Country of registry	Registration No.	Maximum number of berth or stateroom accommodations

6. Submit a copy of passenger ticket or other contract evidencing the sale of passenger transportation.

7. Name and address of applicant's U.S. agent or other person authorized to accept legal service in the United States.

PART II—PERFORMANCE

Answer items 8-15 if applying for Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance. If you are filing evidence of insurance, escrow account, guaranty or surety bond under subpart A of 46 CFR part 540 and providing at least fifteen (15) million dollars (U.S.) of coverage, you need not answer questions 10-15.

8. If you are providing at least fifteen (15) million dollars (U.S.) of coverage, state type of evidence and name and address of applicant's insurer, escrow agent, guarantor or surety (as appropriate).

9.* A Certificate (Performance) is desired for the following proposed passenger voyage or voyages: (Give itinerary and indicate whether the Certificate is for a single voyage, multiple voyages or all voyages scheduled annually.)

Vessel	Voyage date	Voyage itinerary

10. Items 11-15 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

[ ] Insurance (item 11).

[ ] Escrow (item 12).

[ ] Surety bond (item 13).

[ ] Guaranty (item 14).

[ ] Self-insurer (item 15).

11. (a) Total amount of performance insurance which is to be computed in accordance with 46 CFR 540.5. (Evidence of insurance must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which insurance amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.5).

(c) Name and address of applicant's insurer for performance policy.

12. (a) Name and address of applicant's escrow agent. (Applicant may pledge cash or U.S. Government securities, in lieu of a surety bond, to fulfill the indemnification provisions of Pub. L. 89-777.)

(b) Total escrow deposit which is to be computed in accordance with 46 CFR 540.5. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Performance) will be issued.) Cash $——. U.S. Government Securities $——.

(c) Method by which escrow amount is determined (attach data substantiating that amount is not less than that prescribed by 46 CFR 540.5).

13. (a) Total amount of surety bond in accordance with 46 CFR 540.6. (The bond must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which bond amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.6).

(c) Name and address of applicant's surety on performance bond.

14. (a) Total amount of guaranty which is to be computed in accordance with 46 CFR 540.5. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which guaranty amount is determined (attach data substantiating that amount is not less than that prescribed in 46 CFR 540.5).

(c) Name and address of applicant's guarantor.

15. If applicant intends to qualify as a self-insurer for a Certificate (Performance) under 46 CFR 540.5, attach all data, statements, and documentation required therein.

PART III—CASUALTY

Answer Items 16-22 if Applying for Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons

16. (a) Name of passenger vessel subject to section 2 of Pub. L. 89-777 operated by you

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* The filing of sailing schedules will be acceptable in answers to this question.

to or from U.S. ports which has largest number of berth or stateroom accommodations.

(b) State the maximum number of berth or stateroom accommodations.

17. Amount of death or injury liability coverage based on number of accommodations aboard vessel named in item 16 above, calculated in accordance with 46 CFR 540.24.

Items 18-22 Are Optional Methods: Answer Only the One Item Which is Applicable to This Application

18. (a) Total amount of applicant's insurance. (Evidence of the insurance must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's insurer.

19. (a) Total amount of surety bond. (Bond must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's surety for death or injury bond.

20. (a) Total amount of escrow deposit. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's escrow agent.

21. (a) Total amount of guaranty. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's guarantor.

22. If applicant intends to qualify as a self-insurer for a Certificate (Casualty) under 46 CFR 540.24(c), attach all data, statements and documentation required therein.

PART IV—DECLARATION

This application is submitted by or on behalf of

(a) Name.
(b) Name and title of official.
(c) Home office— Street and number.
(d) City.
(e) State or country.
(f) ZIP Code.
(g) Principal office in the United States—Street and number.
(h) City.
(i) State.

I declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

By ——————————————

(Signature of official)

——————————————

(Date)

Comments:

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990]

EFFECTIVE DATE NOTE: At 55 FR 34568, Aug. 23, 1990, corrected at 55 FR 35983, Sept. 4, 1990, in Form FMC-131, part II—Performance, the introductory paragraph and paragraph 8 were amended by replacing "ten (10)" with "fifteen (15)", effective February 19, 1991.

FORM FMC-132A

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. ———
FMC Certificate No. ———

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that we ——— (Name of applicant), of ——— (City), ——— (State and country), as Principal (hereinafter called Principal), and ——— (Name of surety), a company created and existing under the laws of ——— (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of ———, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of subpart A of part 540 of title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility and [illegible] supplying transportation and other services subject to subpart A of part 540 of title 46, Code of Federal Regulations, in accordance with the ticket contract between the Principal and the passenger, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to subpart A of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services in accordance with the ticket contract made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of subpart A of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ———, 19—, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on — day of ———, 19—.

PRINCIPAL

Name ______________________

By ______________________

(Signature and title)

Witness ______________________

SURETY

[SEAL] Name ______________________

By ______________________

(Signature and title)

Witness ______________________

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

FORM FMC-133A

FEDERAL MARITIME COMMISSION

Guaranty No. ———

FMC Certificate No. ———

GUARANTY IN RESPECT OF LIABILITY FOR NONPERFORMANCE, SECTION 3 OF THE ACT

1. Whereas ————— (Name of applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $———.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of trans-

portation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates ————, with offices at ————, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, subpart A of part 540 of title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

————————————

(Place and Date of Execution)

————————————

(Type Name of Guarantor)

————————————

(Type Address of Guarantor)

By ————————————

(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

§ 540.20 Scope.

The regulations contained in this subpart set forth the procedures whereby owners or charterers of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, *passengers embarking at United States ports* means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the owner or charterer of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89-777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC-131 for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages. Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty) shall be accompanied by a filing fee remittance of $800.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commissioner, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC-132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC-132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located

within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC-133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC-133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify, and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Casualty) shall become null and void upon cancellation or termination of evidence of insurance, surety bond, guaranty, or escrow account.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§ 540.27 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132B), guaranty (Form FMC-133B), and application (Form FMC-131 as set forth in subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

(f) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Secretary of the Commission evidence of any such arrangement.

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

(h) Every person who has been issued a Certificate (Casualty) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every such 6-month period commencing with the first 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Casualty). In addition, the statements will be due within 30 days after the close of every 6-month period.

FORM FMC–132B

(5-67)

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. ————
FMC Certificate No. ————

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that we ———— (Name of applicant), of ———— (City), ———— (State and country), as Principal (hereinafter called Principal), and ———— (Name of surety), a company created and existing under the laws of ———— (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of ————, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of subpart B of part 540 of title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to subpart B of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall in no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Pub. L. 89-777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ———, 19—, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ———, 19—.

PRINCIPAL

Name ————————————

By ————————————

(Signature and title)

Witness ————————————

SURETY

Name ————————————

By [SEAL]————————————

(Signature and title)

Witness ————————————

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

FORM FMC-133B

(5-67)

FEDERAL MARITIME COMMISSION

Guaranty No. ————————————

FMC Certificate No.————————————

GUARANTY IN RESPECT OF LIABILITY FOR DEATH OR INJURY, SECTION 2 OF THE ACT

1. Whereas ———— (Name of Applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a)

of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates ——————, with offices at ——————, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, subpart B of part 540 of title 46, Code of Federal Regulations, issued under section 2 of the Pub. L 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

____

(Place and Date of Execution)

____

(Name and Guarantor)

____

(Address of Guarantor)

By ______________________________

(Name and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Subpart C—Assessment, Remission, and Mitigation of Civil Penalties

§ 540.30 Scope.

Sections 2 and 3 of Pub. L. 89-777 subject any person who violates the provisions of those sections to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These sections further provide that such penalties may be "remitted or mitigated" by the Commission "upon such terms as they in their discretion shall deem proper." This subpart sets forth regulations prescribing standards and procedures for the collection, mitigation, and remission of civil penalties incurred under sections 2 and 3 of Pub. L. 89-777, and the rules and regulations promulgated pursuant thereto.[1]

§ 540.31 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States, or the laws of any foreign country.

(b) *Commission* means the Federal Maritime Commission.

(c) *The Act* means Pub. L. 89-777 (80 Stat. 1356, 1357, 1358)).

(d) *Offender* means any person charged with a violation.

§ 540.32 Procedure.

(a) If it is adjudged or otherwise determined that a violation has occurred and it is decided to invoke a statutory penalty, a registered letter will be sent to the offender informing him or her of the nature of the violation, the statutory and factual basis of the penalty, and the amount of the penalty. This notification shall further advise the offender that, within 20 days, or such longer period as the Commission in its discretion may allow, he or she may either pay the penalty demanded or petition for the remission or mitigation of such penalty.

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[1] Sections 2(d) and 3(d) of Pub. L. 89-777 authorize the Federal Maritime Commission to prescribe such regulations as may be necessary to carry out the provisions of secs. 2 and 3.

(b) All correspondence, petitions, forms, or other instruments regarding the collection, remission or mitigation of any penalty under this subpart should be addressed to the Bureau of Hearing Counsel, Federal Maritime Commission, Washington, DC 20573.

§ 540.33 Petition for remission or mitigation of penalty.

(a) An offender may submit any oral or written material or information in answer to the notification letter explaining, mitigating, showing extenuating circumstances, or, where there has been no formal proceeding on the merits, denying the violation. Material or information so presented will be considered in making the final determination as to whether to mitigate the penalty and the amount for which it will be mitigated, or whether to remit it in full.

(b) When no penalty is invoked or the penalty is remitted, no further action by the offender will be necessary. When the penalty is mitigated, such mitigation will be made conditional upon the full payment within 15 days or such longer period as the Commission in its discretion may allow unless the offender within that time executes a promissory note as provided by § 540.36.

§ 540.34 Settlement; execution of agreement form.

When a statutory penalty is mitigated and the offender agrees to settle for that amount, he or she shall be provided with a Settlement Agreement Form (appendix A), to be signed, in duplicate, and returned. This form, after reciting the nature of the violation, will contain a statement evidencing the offender's agreement to settlement of the Commission's penalty claim for the amount set forth in the agreement and shall also embody an "approval and acceptance" provision. Upon settlement of the penalty in the agreed amount, one copy of the Settlement Agreement shall be returned to the debtor with the "Approval and Acceptance" thereon signed by the Director, Bureau of Hearing Counsel.

§ 540.35 Referral to Department of Justice.

(a) The Commission will refer violations to the Department of Justice with the recommendation that action be taken to collect the full statutory penalty when:

(1) The offender, within the prescribed time, does not explain the violation, petition for mitigation or remission, or otherwise respond to letters or inquiries.

(2) The offender, having responded to such letters or inquiries, fails or refuses to pay the statutory or mitigated penalty, as determined by the Commission, within the prescribed time.

(b) No action looking to the remission or mitigation of a penalty shall be taken on any petition, irrespective of the amount involved, if the case has been referred to the Department of Justice for collection.

§ 540.36 Payment of penalties.

Payment of penalties by the offender shall be made by:

(a) A bank cashier's check or other instrument acceptable to the Commission.

(b) Regular installments by check after the execution of a promissory note containing a confess-judgment agreement (Appendix B).

(c) A combination of the alternatives described in paragraphs (a) and (b) of this section. All checks or other instruments submitted in payment of claims shall be made payable to "Federal Maritime Commission."

§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
540.4 (Form FMC-131)	3072-0012
540.5	3072-0011
540.6	3072-0011
540.8	3072-0011
540.9	3072-0011
540.23 (Form FMC-131)	3072-0012
540.24	3072-0011
540.26	3072-0011
540.27	3072-0011

APPENDIX A—EXAMPLE OF SETTLEMENT AGREEMENT TO BE USED UNDER 46 CFR 540.30—540.36

SETTLEMENT AGREEMENT

FMC FILE No. ———

This Agreement is entered into between:

(1) the Federal Maritime Commission and,

(2) ——— hereinafter referred to as Respondent.

WHEREAS, the Commission is considering the institution of an assessment proceeding against Respondent for the recovery of civil penalties provided under the ——— Act ———, for ——— alleged violation(s) of Section(s) ———.

WHEREAS, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent to wit;

———

———

WHEREAS, the parties are desirous of expeditiously settling the matter according to the conditions and terms of this Agreement and wish to avoid the delays and expense which would accompany agency litigation concerning these penalty claims; and

WHEREAS, Section ——— of the ——— Act ——— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and

WHEREAS, the Respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by Respondent or its officers, employees and agents.

NOW THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between ——— (date) and ——— (date), the undersigned Respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $———, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from Respondent arising from the alleged violations set forth and described herein, that have been disclosed by Respondent to the Commission and that occurred between ——— (date) and ——— (date).

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the Respondent other than the agreements and consideration herein expressed.

3. It is expresly understood and agreed that this Agreement is not to be construed as an admission of guilt by undersigned Respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations as set out at 46 CFR part 505, the parties hereby waive application of such procedures.

By ———
Title ———
Date ———

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission.

(Hearing Counsel)

Director, Bureau of Hearing Counsel.
Date——— ———

APPENDIX B—EXAMPLE OF PROMISSORY NOTE TO BE USED UNDER 46 CFR 540.36

PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

FMC FILE No.————

For value received, — ———— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $———— ($———) to be paid at the offices of the Commission in Washington, DC, by bank cashier's or certified check in the following installments:

$———— ($———) within — months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$———— ($———) within — months of execution of the agreement;

$———— ($———) within — months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of the execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [———— percent (——%) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, — ———— (Respondent) does hereby authorize and empower any U.S. attorney, any of its assistants or any attorney of any court of record, Federal or State, to appear for him or her, and to enter and confess judgment against ———— (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon ———— (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

———— (Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By ————————————

Title ————————————

Date ————————————

SUBCHAPTER C—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN DOMESTIC OFFSHORE COMMERCE

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

Sec.
550.0 Scope.
550.1 Exemptions.
550.2 Definitions.
550.3 Filing of tariffs; general.
550.4 Form and preparation of tariffs.
550.5 Contents of tariffs.
550.6 Statement of rates and charges.
550.7 [Reserved]
550.8 Tariffs containing provisions for through intermodal transportation.
550.9 Terminal rules, charges and allowances.
550.10 Amendments to tariffs.
550.11 Supplements to tariffs.
550.12 Cancellation of tariffs.
550.13 Suspension of tariff matter.
550.14 Governing tariffs.
550.15 Tariffs applicable to seasonal transportation service.
550.16 Index of tariffs.
550.17 Transfer of operations, transfer of control, and changes in carrier name.
550.18 Applications for special permission.
550.19 Special rules for bound tariffs filed pursuant to special permission authority.
550.20 Equipment interchange tariffs.
550.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

SOURCE: 49 FR 38836, Oct. 1, 1984, unless otherwise noted.

§ 550.0 Scope.

(a) These regulations govern the publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended, including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act. Common carriers subject to the Shipping Act are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(1) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(2) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(3) Alaska and Hawaii;

(4) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(5) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. chapter 105.

(b) Information obtained under this part is used to determine the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers. Compliance is mandatory and failure of a tariff to conform with this part may result in rejection. Violations of the provisions of this part are also subject to a civil penalty of not more than $1,000 for each day such violation continues. (46 U.S.C. app. 844).

§ 550.1 Exemptions.

(a) The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(1) Transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. chapter 105.

(2) Round trip passenger excursion voyages.

(3) Transportation by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated *horsepower* of 100 or less, provided that such vessels:

(i) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(ii) Are not operated as part of a through route with another domestic offshore carrier; and

(iii) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier.

(4) Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and ports in Southeastern Alaska, provided that said personal vehicles and personal effects are not transported for the purpose of sale, lease, or other commercial activities.

(5) Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee), and such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(6) Transportation of used military household goods and personal effects by non-vessel-operating common carriers.

(7) Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk.

(8) Equipment-Interchange Agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(9) Transportation by Puget Sound Tug & Barge Comopany of general cargo in non-self-propelled barges from Seattle, Washington, to the vicinity of Kivalina, Alaska, during 1988 and 1989.

(b) Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

(c) Carriers providing port-to-port transportation between the United States and Puerto Rico may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984, as amended at 53 FR 5773, Feb. 26, 1988; 53 FR 34299, Sept. 6, 1988; 54 FR 11717, Mar. 22, 1989; 55 FR 3062, Jan. 30, 1990; 55 FR 10243, Mar. 20, 1990]

§ 550.2 Definitions.

The following shall apply to the regulations of this part and to all tariffs filed pursuant to them:

(a) *Amendment* means any change, alteration, correction or modification of an existing tariff, including a tariff supplement.

(b) *Act* or *1916 Act* means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

(c) *Carrier* means any common carrier in interstate commerce. Commonly owned or controlled carriers operating in different transportation modes shall be considered separate carriers for purposes of this part (see paragraph (w) of this section).

(d) *Class rates* means transportation rates applied to specific groups or classes of commodities which are established in accordance with a governing commodity classification scheme.

(e) *Classification* means a publication (not a rate tariff) establishing a scheme for grouping or classifying commodities and for applying an accompanying class rate tariff (or a section of a tariff containing class rates) to the various commodity classes established.

(f) *Commission* means the Federal Maritime Commission.

(g) *Commodity rates* means the transportation rates applied to commodities specifically named or described in the tariff in which the rates are published.

(h) *Domestic Offshore Carrier* means a common carrier by water in interstate commerce as defined by section 1 of the 1916 Act.

(i) *File, filing (of tariff matter)* means the actual receipt by the Federal Maritime Commission at its offices in Washington, DC, including those received by electronic transmission. Electronic filings are those transmitted through the use of commercial data processing terminals and conforming to all the regulations applicable to permanent tariff filings. The data processing receiving terminal(s) are located within the same building as the Commission's Washington, DC offices.

(j) *General decrease* means any change in rates, fares, or charges which will: (1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier, and (2) directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent.

(k) *General increase* means any change in rates, fares, or charges which will: (1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent.

(l) *Joint rates* means rates agreed upon by two or more carriers for transportation jointly offered over all or part of the routes of each participating carrier.

(m) *Local rates* means rates for transportation between two points over the route of a single carrier, the application of which is not contingent upon a prior or subsequent movement of the cargo or passengers carried.

(n) *Person* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

(o) *Port* means a place at which a domestic offshore carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of property or passengers as to any particular transportation movement.

(p) *Post, posted, posting (of tariff matter)* means the maintenance of a complete, up-to-date tariff at local and general offices of the carriers party to the tariff under conditions assuring its availability for inspection by members of the public.

(q) *Project rates* means rates applicable to the transportation of materials and equipment to be employed in the construction or one-time development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. Such construction or development must be undertaken by either the shipper or consignee named on the bill of lading and none of the materials or equipment covered shall be transported for the purpose of resale or other commercial distribution.

(r) *Proportional rates* means transportation rates conditioned upon a prior or subsequent movement of the cargo or passengers carried.

(s) *Round trip excursion voyage* means a single voyage which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions.

(t) *Substituted service* means the occasional use of transportation facilities different from those which the publishing carrier normally and regularly offers to the public; those instances where transportation is performed by someone other than the publishing carrier due to unexpected operating exigencies. The offering or performing of a regular service by means of overland or air transportation over part of the publishing carrier's route, or by using a waterborne service not under the operational control of the publishing carrier, is an arrangement for through transportation and may not be described as substituted service.

(u) *Tariff* means a written document containing all existing and proposed rates, fares, charges, classifications, rules, regulations and practices governing the transportation of passengers or property, all or a segment of which is performed by a domestic offshore carrier (includes rate tariffs, governing tariffs, and all current amendments thereto).

(v) *Tariff matter, tariff material, tariff publication* means a tariff or any portion thereof tendered for filing with the Commission pursuant to this part.

(w) *Through intermodal transportation* means transportation at joint rates over a through route by two or more carriers, at least one of which is, and one of which is not, a domestic offshore carrier. Through transportation entirely by water may be intermodal transportation for purposes of this part when one or more participating carrier(s) is subject to rate regulation pursuant to subchapter III of chapter 105 of title 49, U.S.C.

(x) *Through rate* means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

(y) *Through route* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by:

(1) A single domestic offshore carrier offering service between port terminal areas;

(2) Two or more domestic offshore carriers; or

(3) One or more domestic offshore carriers in connection with one or more other carriers.

(z) *Transshipment* means the physical transfer of cargo from one carrier to another in the course of a through route where at least one of the exchanging carriers is a vessel-operating, domestic offshore carrier.

[49 FR 38836, Oct. 1, 1984 as amended at 50 FR 10968, Mar. 19, 1985]

§ 550.3 Filing of tariffs; general.

(a) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(b) Tariff matter tendered for filing which fails to comply with the 1916 Act, this part, or an order of the Commission is subject to rejection. The Commission also may at any time direct the reissuance or cancellation of tariff matter which does not conform to the 1916 Act or this part.

(c) Tariffs may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be either on file with the Commission or submitted with the tariff matter tendered for filing.

(1) Delegations of tariff filing authority shall be written on the letterhead and signed by a responsible official of the carrier on whose behalf the agent is to act. Such a letter of appointment shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(2) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 550.14 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(3) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a letter of revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked, said letter of revocation to be in the same format as the letter appointing the agent.

(d)(1) Tariffs filed under this part shall be numbered consecutively, with a carrier's initial filing in any particular series being designated No. 1. Freight, passenger, and government tariffs shall be numbered in separate series. Freight tariffs shall be designated as "Tariff FMC-F No. ——;" passenger tariffs shall be designated as "Tariff FMC-P No. ——;" tariffs governing government cargo or passengers shall be designated as "Tariff FMC-G No. ——;" and tariff indices shall be designated "FMC-I No. ——."

(2) Tariff submissions which are not numbered as required in paragraph (d)(1) of this section, may be accepted for filing on an occasional basis if accompanied by a letter clearly explaining the purpose and need for the deviation.

(e)(1) Tariff matter will be received by the Commission at its Washington, D.C. offices on an around-the-clock, basis. Receipt of tariff filings during other than normal business hours will be time stamped at a tariff mail drop in the lobby of the Commission's Washington, DC offices.

(2)(i) Terminal's receiving electronic filings must imprint the date and time received on the top or bottom of each page as well as imprinting a unique machine registration number.

(ii) The unique machine registration number must be registered with the Director, Bureau of Tariffs. Owner/operators of such registered machines must obtain certification from the Director as having delegated authority to receive tariff matter on behalf of the Commission.

(iii) Information received and stored on a "disk" must be filed without alteration. All electronically filed tariff pages including those received and stored on a "disk" must be delivered to the Commission's Tariff Library before 9:00 a.m. the next successive business day following receipt on the receiving machine.

(f) Unless otherwise provided by the Commission, or this part, all tariff matter tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which permits at least 30 days' notice of the filing. The 30-day notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the 31st day.

(g) Except as otherwise provided, tariff matter shall be transmitted to the Commission in duplicate, with both copies contained in a single package or envelope and with all postage or delivery charges prepaid.

(h) Tariff matter tendered for filing shall be transmitted to each subscriber to the publishing carrier's tariff by first-class mail, not later than the time the tendered material is transmitted to the Commission.

(1) Copies of individual tariff publications or regular subscriptions to an entire tariff filed pursuant to this part shall be promptly made available to any person requesting the same in writing. Subscriptions to a given tariff shall include all special permission requests which pertain to that tariff. Except as otherwise provided by the rules of this part, carriers may assess a reasonable charge for tariff copies and tariff subscriptions, i.e., not greater than the full cost of reproduction and delivery of the materials in question.

(2) The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish a designated governmental official or office no more than two (2) copies of any tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Upon receipt of such a request, the carrier shall promptly provide the designated official or office with the requested copies of its existing tariff(s) and add the official or office to its list of tariff subscribers. No charge shall be made for this service, but such officials and officers shall be treated in the same fashion as paid

subscribers in all other respects and are considered tariff subscribers for purposes of this part.

(i) Tariff matter tendered for filing must be accompanied by a letter of transmittal not to exceed 8½ inches by 11 inches in size, which shall:

(1) Fully identify the filing party (i.e., the publishing carrier or its tariff agent) including its name, business address and business telephone;

(2) Fully identify each tariff publication tendered, including the following information in tabular form: Carrier Name, Tariff No., Revision/Page/Supplement No.;

(3) Describe the specific effect of each tariff change implemented by each tariff publication listed in paragraph (i)(2) of this section;

(4) Include or attach such certifications as are required by Part 552 of this chapter.

(5) Certify compliance with the requirements of paragraph (h) of this section; and

(6) Include or attach a delegation of authority from the publishing carrier(s) appointing the tariff filing agent (applicable only if the filing party is a tariff agent and an appropriate delegation of authority is not already on file).

(j) Letters of transmittal shall be tendered in duplicate. One copy will be receipted and returned to the filing party, but only if a self-addressed, stamped envelope is enclosed for that purpose.

(k) No domestic offshore carrier may publish any tariff matter which duplicates or conflicts with any other tariff or tariff provision to which said carrier is a party.

(l)(1) Tariff matter which fails to meet the requirements of the 1916 Act, this part, or an order of the Commission may be rejected after filing. Tariff matter may be rejected for failure of the filing carrier to comply with the provisions of Rule 67 of the Commission's Rules of Practice and Procedure (46 CFR 502.67) and/or part 552 of this chapter. The filing party shall be notified in writing of the reason for the rejection and one copy of the rejected material will be returned to it.

(2) Rejected tariff material is void and its use is unlawful. The revision number or, in the case of an entire tariff, the series number, of a rejected tariff publication shall not be used again, nor shall the rejected publication be referenced in any subsequent tariff publication as being, or having been, cancelled, amended, or withdrawn. Tariff matter tendered in place of rejected material must bear the notation:

> Issued in lieu of (*identify the rejected material*) rejected by the Federal Maritime Commission.

and must cancel any prior publication which the rejected material was originally intended to cancel.

(m) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the publishing carrier from the obligations of the 1916 Act or this chapter, regardless of whether these obligations preceded or followed the acceptance of the tariff in question.

(n) Tariff matter filed with the Commission shall not be withdrawn by the publishing carrier.

(o) Domestic offshore carriers shall maintain their tariffs in a complete, accessible and usable form and shall keep them available for inspection by any member of the public during ordinary business hours.

(1) There shall be posted at each facility at which a domestic offshore carrier receives freight or passengers for transportation, or at which it employs a general or sales agent, a copy of all of that carrier's tariffs governing transportation to and from the facility in question.

(2) There shall be posted at the principal place of business of a domestic offshore carrier all of the tariffs under which that carrier offers transportation service subject to this part.

(3) Tariff publications shall be posted a minimum of 30 days prior to their effective date unless otherwise provided for by the 1916 Act, the Commission, or this part. Amendments (including supplements) which have been filed, but are not yet effective, shall be posted in a fashion which clearly identifies their prospective nature and shall not physically replace existing tariff matter until said amendments

reach their effective date. The maintenance of a presently effective tariff in one binder and all filed, but not yet effective, tariff matter affecting that tariff in a second "proposed tariff changes" binder is recommended. Persons requesting to inspect a carrier's tariffs shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and proposed rates and practices of the carrier.

(p)(1) Only tariffs of persons engaged in common carriage by water shall be filed. Tariffs shall not contain terms such as "Taken by Special Agreement or Arrangement Only," "Subject to Carrier's Option of Acceptance," or "Carried at Cargo Owner's Risk," which terms (unless accompanied by sufficient qualifying language explaining a more limited interpretation) are clearly inconsistent with the legal responsibilities of a common carrier towards the shipping public.

(2) Tariff publications shall not contain rules purporting to limit their liability in a manner not authorized by law;

(3) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than seasonal discontinuances as provided by § 550.15) shall be cancelled within 60 days after the cessation of operations.

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984, as amended at 50 FR 10968, Mar. 19, 1985]

§ 550.4 Form and preparation of tariffs.

(a) Tariffs shall be published in loose-leaf form. Pages shall be 8½ by 11 inches in size, and plainly and legibly printed, mimeographed, planographed or otherwise durably reproduced on paper equivalent to, or better than, offset book paper, sub. 100. Pages shall be printed on one side only, using not less than 8-point bold or full face type, except that 6-point type may be used for reference marks, explanations, column headings, or bills of lading. Original typewritten or proof sheets shall not be used for filing or posting.

(b) Tariff matter tendered for filing or used for posting shall not contain erasures or original alterations of any nature.

(c) A margin, without any printing or tariff matter thereon, of not less than three-quarters of an inch is required on the top, bottom, and binding edges of all tariff pages. A similar blank margin of not less than ¼ of an inch is required on the nonbinding edge of all pages.

(d) Tariff matter containing rates will be arranged in an orderly columnar fashion with vertical ruling separating columns of rates, rate bases, and commodity/item descriptions. Horizontal groupings will be done in a manner which clearly defines the rates, terms, conditions, etc., applicable to a given commodity or item with no more than six horizontal lines of type without a page-wide break or horizontal ruling. Exhibit No. 1 following this section demonstrates the required format.

(e) The first page of every tariff shall be the Title Page (see Exhibit No. 2 following § 550.5), and all pages subsequent to the Title Page shall be consecutively numbered, beginning with Page 1. The first edition of a page shall be designated as:

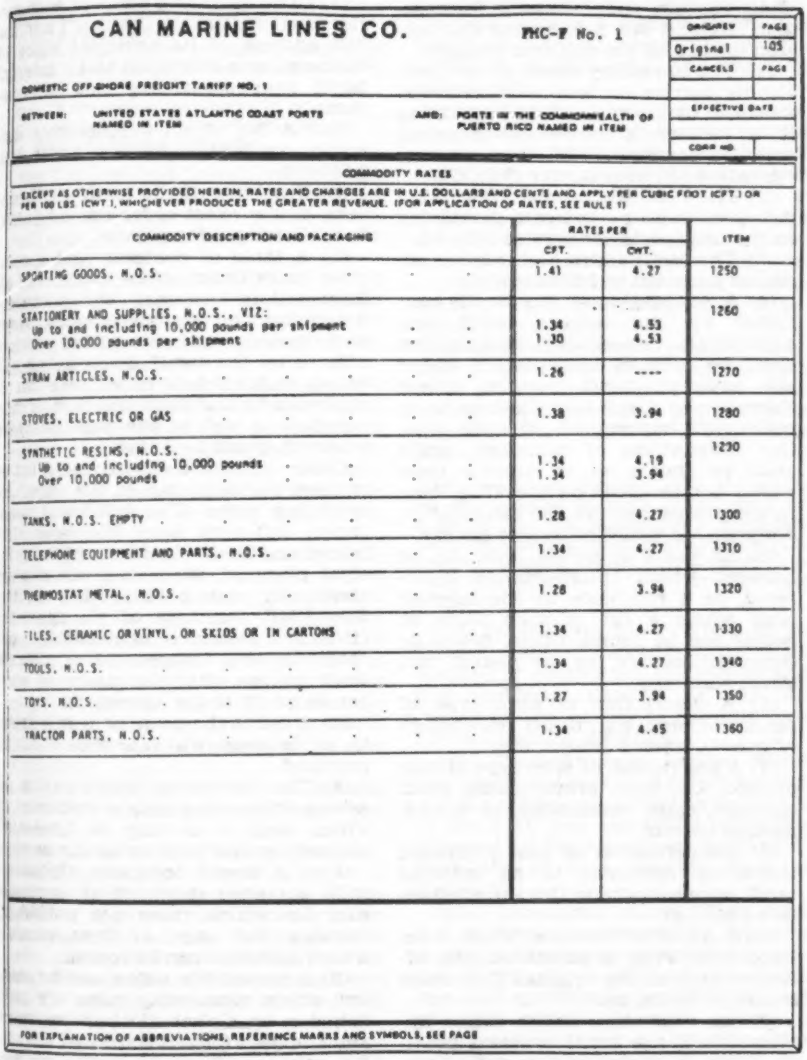
"Original Page No. —" with subsequent revisions to be designated as "Revised Page No. —." (*Show Revision No.*).

Revision of individual pages are to be published in a numerically consecutive order. Departures from such consecutive ordering may be accepted for filing on an occasional basis if accompanied by a letter clearly explaining the purpose and need for the deviation.

(f) Each tariff page shall be identified by printing the publishing carrier's name and the applicable FMC tariff designation at the top of the page.

(g) The page number, revision number and effective date of each page shall be printed in the upper right-hand corner of the page.

EXHIBIT NO. 1 — §550.4



CAN MARINE LINES CO.	FMC-F No. 1	ORIG/REV	PAGE
		Original	105
		CANCELS	PAGE
DOMESTIC OFF-SHORE FREIGHT TARIFF NO. 1			
BETWEEN: UNITED STATES ATLANTIC COAST PORTS NAMED IN ITEM	AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO NAMED IN ITEM	EFFECTIVE DATE	
		CORR NO.	

COMMODITY RATES

EXCEPT AS OTHERWISE PROVIDED HEREIN, RATES AND CHARGES ARE IN U.S. DOLLARS AND CENTS AND APPLY PER CUBIC FOOT (CFT.) OR PER 100 LBS. (CWT.), WHICHEVER PRODUCES THE GREATER REVENUE. (FOR APPLICATION OF RATES, SEE RULE 1)

COMMODITY DESCRIPTION AND PACKAGING	RATES PER		ITEM
	CFT.	CWT.	
SPORTING GOODS, N.O.S.	1.41	4.27	1250
STATIONERY AND SUPPLIES, N.O.S., VIZ:			1260
Up to and including 10,000 pounds per shipment . .	1.34	4.53	
Over 10,000 pounds per shipment	1.30	4.53	
STRAW ARTICLES, N.O.S.	1.26	----	1270
STOVES, ELECTRIC OR GAS	1.38	3.94	1280
SYNTHETIC RESINS, N.O.S.			1290
Up to and including 10,000 pounds	1.34	4.19	
Over 10,000 pounds	1.34	3.94	
TANKS, N.O.S. EMPTY	1.28	4.27	1300
TELEPHONE EQUIPMENT AND PARTS, N.O.S.	1.34	4.27	1310
THERMOSTAT METAL, N.O.S.	1.28	3.94	1320
TILES, CERAMIC OR VINYL, ON SKIDS OR IN CARTONS . . .	1.34	4.27	1330
TOOLS, N.O.S.	1.34	4.27	1340
TOYS, N.O.S.	1.27	3.94	1350
TRACTOR PARTS, N.O.S.	1.34	4.45	1360

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

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§ 550.5 Contents of tariffs.

(a) The Title Page of every tariff shall contain the following information (Exhibit No. 2 following this section illustrates the required format):

(1) The operating name of the publishing carrier (or group of carriers) followed by an annotation identifying it as either a non-vessel-operating common carrier (NVOCC) or a vessel operating common carrier (VOCC).

(2) The FMC file number of all 1916 Act, section 15 agreements pertaining to the transportation service offered.

(3) The tariff series and number assigned pursuant to § 550.3(d)(1).

(4) A designation of any tariffs cancelled by the instant tariff (see § 550.12(a)). Cancellation designations shall be printed immediately under the assigned tariff number unless there are so many cancellations as to make this impractical. In such case, the designations of cancelled tariffs shall be shown on an interior page which is referenced on the Title Page in the position where the cancellation designations would otherwise appear.

(5) All ports or points from, to, or between which transportation is offered, or a reference to the interior page where a list of such ports or points can be found. Cities, towns or communities are to be listed, not street addresses.

(6) A description of each type of service offered, e.g., direct (no change of vessel), transshipment, etc.

(7) A description of each type of rate offered, i.e., local, proportional, joint, through, class, commodity, or combinations thereof.

(8) Identification of any governing tariffs or reference to an internal tariff page containing this information (see § 550.14).

(9)(i) An effective date. When a revised Title Page is submitted, the effective date of the original Title Page shall also be shown.

(ii) An expiration notice (when applicable). If the tariff contains provisions which expire at a specific time, the expiration date shall be shown in the tariff items to which it applies and the existence of such an expiration date shall be indicated on the Title Page with a reference to the affected tariff item.

(10) The name, title and mailing address of the filing party.

(11) The operating name of each carrier participating in the tariff and the full address of its principal place of business, or a reference to an internal tariff page containing this information.

(12) A list of all supplements currently applicable to the tariff (see § 550.11).

(b) The body of the tariff shall contain, in the exact order named below, the following information:

(1) A table of contents and a complete index showing the location of all information necessary to accurately determine the complete rates, fares and charges applicable to the services offered by the tariff. Such index will list all such subjects of information alphabetically and show the item or rule numbers as well as the page numbers where they can be found.

(2) An alphabetically arranged list of carriers participating in the tariff by operating name. The full legal name (when different from the operating name) and the full address of its principal place of business shall also be shown for each participating carrier. The FMC numbers of all approved (1916 Act) section 15 agreements applicable to the transportation offered shall appear after the name of each carrier party to the agreement.

(3) A list of the ports or points from, to, or between which service shall be provided.

(4) The full street address of a receiving/disbursing freight station(s) at which cargo is or may be tendered/claimed by shippers using the service.

(5)(i) A single, complete, alphabetically arranged index of all commodities for which rates are published showing the page or item number where each rate can be found.

(ii) A commodity index may be omitted where commodity rates are published in an alphabetical arrangement and the descriptions employed are sufficiently specific as to require no further breakdown other than that required to delineate different minimums or valuations.

(6)(i) A full explanation of any symbols, reference marks, or abbreviations employed. The following standard symbols and explanations are required for the purposes indicated:

▼ or (R) to denote reductions;
◊ or (A) to denote increases;
Δ or (C) to denote changes resulting in neither increases nor reductions in rates or charges;
● or (X) to denote no change in rates;
□ or (N) to denote reissued matters; and
+ or (D) to denote deletions.

(ii) The symbols prescribed in paragraph (b)(6)(i) of this section shall not be used for any other purpose nor shall any other symbol be used for the above purposes.

(7) An alphabetical list of other tariff publications which govern the service being offered in any manner (see § 550.14), including their series and number designations.

(8) The rules and regulations affecting the transportation being offered. Specific rules shall be published to govern at least the following matters:

(i) *Application of rates.* A clear and definite statement of all services provided to shippers as being included in the published rates.

(ii) *Effective date.* A clear and definite statement of the time at which tariff changes become applicable to any particular shipment. In the case of joint rates (including those for through intermodal transportation), the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(iii) Heavy lift practices and charges.

(iv) Extra length practices and charges.

(v) Minimum bill of lading charges.

(vi) *Payment of freight charges.* A clear and definite statement of the terms of payment for transportation services rendered, e.g., C.O.D., prepaid only, etc. If credit is extended, the rule must describe the credit terms offered and the conditions under which credit will be extended.

(vii) *Bills of lading.* A specimen copy of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement between carrier and shipper shall be provided, unless a governing bill of lading tariff has been filed pursuant to § 550.14. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime Commission tariffs and shall not contain provisions which are more stringent than, or otherwise in conflict with, the terms of such tariffs.

(viii) *Freight forwarder compensation.* A statement of the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(ix) *Application of surcharges and arbitraries.* A clear and definite statement of the method by which surcharges, arbitraries, or other similar charges are to be applied, e.g., in aggregate, by compounding, etc.

(x) *Minimum quantity rates (alternation of rates).* When two or more rates are applicable to the same commodity, depending upon the quantities shipped, there shall be a tariff rule stating:

> When two or more freight rates are named for the carriage of goods of the same description, and the application is dependent upon the quantity of the goods shipped, the charges assessed against the smaller shipment shall not exceed those for any larger quantity.

(xi) *Ad valorem rates.* When an ad valorem rate is published, the exact method of computing the charge and the additional liability, if any, assumed by the carrier in consideration thereof shall be specified.

(xii) *Transshipment service.* When transshipment service is offered pursuant to agreements subject to section 15 of the 1916 Act, any tariff provisions required by the agreement itself or by Part 559 of this chapter shall be stated.

(xiii) *Hazardous cargo.* When rates for explosive, inflammable, corrosive or other dangerous materials are published (or the published rate tariff does not specifically prohibit carriage of such materials), rules governing their carriage shall be clearly stated unless a governing rules tariff has been filed pursuant to § 550.14.

(xiv) *Automobile rates.* If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety:

pages tightly bound

(A) Automobiles shall be rated by measure. The cubic measurement for the five most recent model years will be that prescribed by the manufacturer of the particular make and model as shown on pages —— to —— herein. (Alternatively, the carrier may state "as shown in Federal Maritime Commission publication, *Automobile Manufacturers' Measurements.*")

(*1*) Automobiles whose measurements are not shown above, shall be individually measured by the carrier. This fact shall be noted on the bill of lading.

(*2*) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown above, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements.

(B) Automobiles shall be rated by weight. Each vehicle tendered for shipment shall be individually weighed on the carrier's scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster's signed statement to the carrier.

(xv) *Container description.* (A) When rates or charges for containerized or trailerized cargo are based upon the use of a standard size, type, or capacity container/trailer, or upon the use of specifically identified container/trailers, then the tariff shall state the exact size, type, capacity and identity of the container/trailer upon which said rates are based, and include a conversion formula or table which readily adjusts the rates or charges applicable to standard container/trailers to those applicable to other container/trailers which might be provided by shippers or consignees or by the carrier itself, except that no conversion formula or table need be included when a tariff expressly precludes carrier and shipper/consignee alike from using nonstandard container/trailers. If referenced by the applicable tariff rule, this information may be set forth in a rate item or in a governing tariff filed pursuant to § 550.14.

(B) For purposes of this subdivision: (*1*) *"Container"* means a demountable freight carrying unit transported on ocean going vessels without wheels attached. (*2*) *"Trailer"* means a wheeled vehicle on or in which freight can be carried, transported by ocean going vessels without removing its wheels. (*3*) *"Capacity"* means the maximum cargo measure or weight available to a shipper using a given container/trailer. (*4*) *"Identity"* means the specific serial number(s) or code marking(s) affixed to the container/trailers of a given carrier.

(xvi) *Overcharge claims.* No tariff in the domestic offshore commerce shall limit the filing of overcharge claims with a carrier for private settlement to a period of less than two years after accrual of the cause of action, nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge. No tariff in the domestic offshore commerce shall require that overcharge claims based on alleged error in weight, measurement or description of cargo be filed before the cargo has left the custody of the carrier. Tariffs shall contain a rule which states that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application. This rule shall clearly indicate where and by what method such claims are to be filed with the carrier and shall further advise that such claims may also be filed with the Federal Maritime Commission. At a minimum, tariffs shall contain the following provisions:

(A) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, DC 20573, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821). Such claims must be filed within two years of the date the cause of action accrues.

(B) Claims for freight rate adjustments filed in writing shall be acknowledged by the carrier within twenty days of receipt by written notice to the claimant of the tariff provisions actually applied and claimant's rights under the Shipping Act, 1916.

(xvii) *Use of carrier equipment.* (A) If a carrier provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent for the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. The sample agreement shall include the general terms and conditions affecting cost (e.g. maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment, including cargo containers, trailers, and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the rule and shall clearly identify the location and type of equipment to which they apply. If a carrier does not have a sample equipment interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above.

(B) If a carrier has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be included in either a separate section within the tariff or a governing equipment interchange tariff filed in accordance with §§ 550.14(a)(1) and 550.20. In either instance, Rule 17 in the carrier's rate tariff shall contain only a reference to the location of the sample EIA and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. A carrier is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(9) Additional rules which affect the application of the tariff shall follow immediately the rules specified above and shall be numbered consecutively, commencing with number 18. Special rules affecting particular items, rates or charges shall be expressly referenced in the item, rate or charge affected.

(10) Exceptions to classifications, rules, rates or charges shall be enumerated in the tariff to which they apply. Exceptions to particular items, rates, rules or charges must be set forth within each item, rate, rule or charge affected. General tariff exceptions may be published in a separate rule entitled "Exceptions to the Application of this Tariff."

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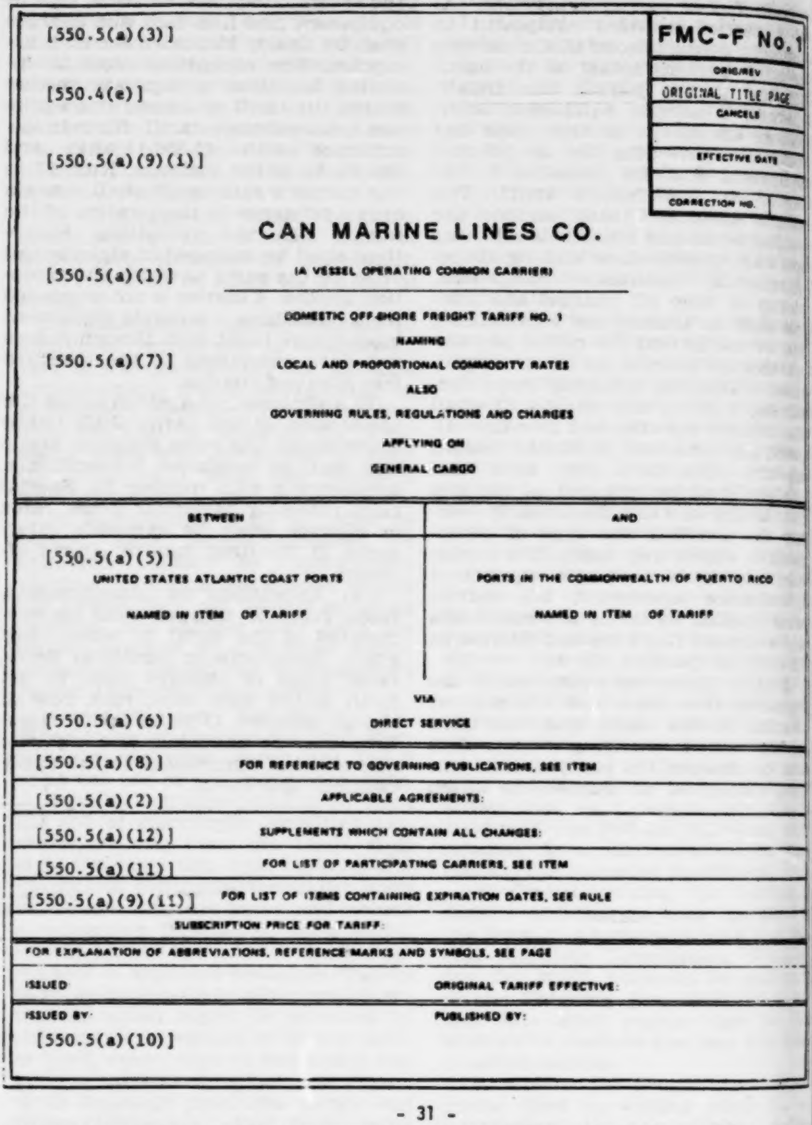
EXHIBIT NO. 2 —§550.5



[550.5(a)(3)] [550.4(e)] [550.5(a)(9)(i)]	**FMC-F No. 1** ORIG/REV ORIGINAL TITLE PAGE CANCELS EFFECTIVE DATE CORRECTION NO.

CAN MARINE LINES CO.

[550.5(a)(1)] (A VESSEL OPERATING COMMON CARRIER)

DOMESTIC OFF-SHORE FREIGHT TARIFF NO. 1

NAMING

[550.5(a)(7)] LOCAL AND PROPORTIONAL COMMODITY RATES

ALSO

GOVERNING RULES, REGULATIONS AND CHARGES

APPLYING ON

GENERAL CARGO

BETWEEN	AND
[550.5(a)(5)] UNITED STATES ATLANTIC COAST PORTS NAMED IN ITEM OF TARIFF	PORTS IN THE COMMONWEALTH OF PUERTO RICO NAMED IN ITEM OF TARIFF

VIA

[550.5(a)(6)] DIRECT SERVICE

[550.5(a)(8)] FOR REFERENCE TO GOVERNING PUBLICATIONS, SEE ITEM

[550.5(a)(2)] APPLICABLE AGREEMENTS:

[550.5(a)(12)] SUPPLEMENTS WHICH CONTAIN ALL CHANGES:

[550.5(a)(11)] FOR LIST OF PARTICIPATING CARRIERS, SEE ITEM

[550.5(a)(9)(ii)] FOR LIST OF ITEMS CONTAINING EXPIRATION DATES, SEE RULE

SUBSCRIPTION PRICE FOR TARIFF:

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

ISSUED: ORIGINAL TARIFF EFFECTIVE:

ISSUED BY: PUBLISHED BY:

[550.5(a)(10)]

- 31 -

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984, as amended at 52 FR 26479, July 1 1987; 53 FR 5773, Feb. 26, 1988; 55 FR 10241, 10243, Mar. 20, 1990]

Editorial Note: At 52 FR 26479, July 15, 1987, in § 550.5(b)(8)(xiv)(A), the parenthetic language in which reads, "(Alternatively, the carrier may state 'as shown in Federal Mar time Commission publication, Automobile Manufacturers' Measurements.')," was suspende indefinitely.

§ 550.6 Statement of rates and charges.

(a) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, rules, regulations or classifications shall not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing carrier is a party.

(b) The correct application of rates shall be clearly and definitely stated in terms of an established unit of freight (e.g., per 100 pounds, ton of 2,000 pounds, ton of 2,240 pounds, cubic foot, etc.).

(c) Rates stated as "per barrel" or "per package" shall define the exact type, size and capacity of the package unit entitled to the stated rate. Clearly-worded rules for correctly determining the weights or measurements of such package units shall be included in the tariff.

(d) Rates which vary with the manner in which cargo is packed or delivered for shipment (e.g., loose, crated, palletized) shall include a clear statement governing their application.

(e) Rates published on a "weight or measurement" basis shall state whether the basis producing the greater or the lesser revenue to the carrier shall apply.

(f) Commodity rates shall displace any class rates which would otherwise be applicable. Commodity rates must be specific and shall not apply by implication, or otherwise, to analogous articles.

(g) Commodities and generic commodity groups on which rates are stated shall be listed alphabetically. When item numbers are published alongside commodities in the index, the item number shall be shown with the appropriate commodity wherever the commodity appears in the tariff.

(h) A commodity item may establish rates for several articles without naming them, but only if it references an item or rule in the same tariff (or a governing classfication filed pursuant to § 550.14) which does name the affected commodities.

(i) Rates for or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port", provided that any such arbitrary or differential is clearly defined and is referenced in the rate item affected.

(j) Commodity rates subject to minimum quantity requirements shall include a clear statement of such requirements in the commodity item description to which they apply.

(k)(1) Rates for the transportation of different, separately rated articles in mixed lots where no specific mixture of articles is required ("mixed shipment") shall be established by a general tariff rule which clearly defines such rates and the basis for their application.

(2) Rates for the transportation of different, separately rated articles in specified proportions as a single generic commodity (not "mixed shipments"), shall be established by a general tariff rule which clearly describes the mixture of articles required.

(l) The general tariff rule described in paragraphs (k)(1) and (k)(2) of this section shall require that the composition of the qualifying shipment be shown on the face of the bill of lading governing the movement, except that, if the shipment contains a greater number of different commodities than is required to qualify for the generic rate, the bill of lading description need show the shipment's composition only to the extent necessary to so qualify.

(m) Tariffs purporting to establish project rates shall:

(1) Include an exact description of the project which demonstrates that it is qualified for a "project rate" within the meaning of § 550.2(q);

(2) Include a list of the commodities to be transported under the project rate;

(3) Include a statement of the exact date upon which the project rate will expire;

(4) Include a statement that only proprietary materials actually employed in the project are eligible for the project rate and provide for the use of a bill of lading clause on all project rate cargo which shall state that:

> All materials included in this bill of lading are of a wholly proprietary nature and shall

not be resold or otherwise commercially distributed at destination.

(5) Be accompanied by a separate economic justification demonstrating that the project rate will cover the carrier's variable costs and contribute to its fixed expenses; and

(6) Be accompanied by a separate certificate of service reciting the names of all domestic offshore carriers with FMC tariffs for transportation between the project rate ports (if no such carriers exist, then a statement is required to that effect) and stating that said carriers have been simultaneously mailed a copy of the tariff filing (exclusive of economic justification).

(n) Proportional rates must be accompanied by a clear statement of the circumstances under which, and the points between which, they shall apply. When no such statement is provided, a proportional rate shall be available in connection with any other rate to or from the proportional rate point in question.

(o) Tariffs published subject to a governing classification shall not state rates as a percentage of a base rate, but shall publish a specific rate for each class or percentage thereof for which service is proposed.

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984]

§ 550.7 [Reserved]

§ 550.8 Tariffs containing provisions for through intermodal transportation.

(a) In addition to the other requirements of this part, tariffs containing rates, charges, rules or regulations for through intermodal transportations shall:

(1) Contain a Title Page stating that the tariff pertains to through intermodal transportation.

(2) List, either on the Title Page or on an interior page referenced on the Title Page, all ports or points to, from and between which the rates apply and the ports through which cargo originating or terminating in such places shall move. Ports or points served shall be described by the name of the city or town which commonly identifies the actual area where freight or passengers are picked up or delivered.

(3) Describe the mode of transportation provided by each participating carrier, i.e., highway, railroad, air, water (FMC), and water (non-FMC).

(4) Contain a rule setting forth the liability and responsibility of each participating carrier, together with a specimen of the bill of lading or other contract of affreightment governing the intermodal service offered.

(5) State all through intermodal rates together with the port-to-port proportional rate collected by the domestic offshore carrier for ocean transportation. The port-to-port proportional rate may be shown either:

(i) In a column adjacent to the column containing the applicable through rate; or

(ii) Directly under the commodity description or the through rate.

(6) Separately state all charges collected by the domestic offshore carrier.

(b)(1) When through intermodal rates are constructed by combining domestic offshore rates with inland rates published in effective Interstate Commerce Commission (ICC) or Civil Aeronautics Board (CAB) tariffs, copies of the actual ICC or CAB tariff material may be incorporated into the required FMC tariff as a separate informational tariff section.

(2) The tariff format requirements of this part shall not apply to ICC and CAB tariff material tendered as a section of a through intermodal tariff, but only if each page thereof is clearly marked to indicate that it is for informational purposes only and if the pages also bear the tariff series and number designations of the FMC tariff to which they belong.

(3) Whenever the ICC or CAB tariff being incorporated is amended, canceled or otherwise altered, the corresponding informational sections of the FMC tariff shall be simultaneously and identically altered.

(c) A memorandum of every agreement or arrangement between a domestic offshore carrier and any other carrier establishing through intermodal transportation, but not subject to prior approval pursuant to section 15 of the 1916 Act, shall be filed concurrently with the filing of any through intermodal transportation tariff based upon such agreement or arrangement.

§ 550.9 Terminal rules, charges and allowances.

(a) All terminal privileges, facilities or services (hereinafter jointly referred to as "terminal services" for purposes of this section) provided to shippers, consignees or passengers shall be fully and completely described in the carrier's tariff, regardless of whether such services result in charges separately assessed and collected as additions to the carrier's basic transportation rate or are simply included within the basic transportation rate without differentiation.

(b) When additional charges are assessed for terminal services provided by the carrier or its agents, the carrier's tariff shall contain an appropriate provision separately stating the exact amount of such charges.

(c) When terminal services are performed or made available by a third party (not the carrier or its agents), and charges for such services are assessed against the account of the cargo or passenger, the carrier's tariff shall contain an appropriate provision advising cargo interests/passengers of this fact. This provision shall describe the terms and conditions under which such services will be made available and performed and specify how and by whom all applicable charges will be collected. Reference to an appropriate terminal tariff or other governing publication shall be sufficient to satisfy the requirements of this paragraph.

(d) When allowances or discounts are paid or otherwise made available to shippers, consignees or passengers in lieu of furnishing a terminal service, the carrier's tariff shall contain an appropriate provision separately stating and fully describing all such allowances or discounts. The exact amount of the allowances or discounts and the terms and conditions under which they are paid shall be included in the required tariff provision.

§ 550.10 Amendments to tariffs.

(a) All changes, additions, or deletions from a tariff shall be known as amendments and shall be filed in the manner prescribed by this section unless otherwise provided by the Commission or this part.

(b) Amendments establishing new or initial rates, or changing rates, fares, charges, rules, or other tariff provisions, which do not constitute a general increase or decrease in rates shall be posted and filed together with any supporting material required by 46 CFR Part 552 of this chapter at least 30 days prior to their effective dates, except that:

(1) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect on the same day they are filed and posted;

(2) Amendments adopting a tariff pursuant to § 550.17 may take effect on the same day they are filed and posted;

(3) Amendments completely cancelling a tariff pursuant to § 550.12(a)(2) due to a cessation of all service by the publishing carrier between the ports or points listed in the cancelled tariff, may take effect on the same day they are filed and posted;

(4) Amendments changing only the name or address of the filing party may be filed and posted on not less than one day's notice;

(5)(i) Amendments in terminal rates, charges and provisions over which the carrier has no control may be filed and posted on not less than ten days' notice, but only if the filing occurs within 30 days after the changed terminal practice is actually implemented by the controlling party.

(ii) Amendments in terminal rates, charges and provisions over which the carrier has no control shall be accompanied by a justification statement fully describing the underlying action of a third party not subject to the carrier's control which makes the short notice tariff change necessary.

(iii) If based upon a change in the rates of a terminal operator, amendments in terminal rates, charges and provisions over which the carrier has no control must cite the name, series, and number designation, page number, item number and effective date of the operator's terminal tariff.

(6) Carriers may file and post on not less than one day's notice, amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(7) Amendments announcing seasonal discontinuance or restoration of service may be filed and posted on not less than ten days' notice. Such amendments shall contain a brief statement announcing the date of discontinuance/restoration and may include no other tariff matter.

(c) Amendments changing rates, fares, charges, rules, or other tariff provisions, which constitute a general increase or decrease in rates, shall be posted and filed together with any supporting material required by Part 552 and § 502.67 of this chapter at least 60 days prior to their effective date.

(d) Amendments shall be made by reprinting the entire page upon which the changed tariff matter will be found. Amended pages shall be designated, in the upper right-hand corner, as revised pages and shall cancel the preceding edition of the same page; e.g., "1st revised page 10 cancels original page 10."

(e) Amendments to existing tariff provisions shall be indicated by the use of the symbols specified in § 550.5(b)(6)(i):

(1) When the same change is made in all, or substantially all, the rates or fares in an entire tariff (or in those printed on a single tariff page), the nature of the change may be indicated in boldface type at the top of the Title Page (or individual tariff page) in substantially the following form:

All rates or fares in this tariff (or supplement or on this page) are increases (reductions), except as otherwise indicated.

(2) When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated as required by § 550.5(b)(6)(i). In addition, the amendment shall state the provisions, if any, still applicable to the tariff matter affected by the deletion.

(3) When deleted tariff material is republished on a different page, the page from which it is deleted shall contain a specific reference to the page on which the relocated provisions can be found.

(f) Amendments effective upon lesser notice periods than those provided by paragraph (b) of this section (i.e., after receipt of special permission authority granted by the Commission), shall contain the notation required by § 550.18(i).

(g) If amendments require the addition of pages at the end of a tariff, such pages shall be numbered consecutively with the last existing tariff page and shall be designated as "Original Page —— (insert next following page number)."

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984]

§ 550.11 Supplements to tariffs.

(a) A supplement is a particular type of tariff amendment which may be filed to accomplish the following tariff changes only:

(1) General rate changes applicable to all, or substantially all, commodities listed in the tariff;

(2) Transfers of operations or changes in carrier control or name pursuant to § 550.17;

(3) Implementation of a Commission suspension order pursuant to § 550.13(b);

(4) Changes in effective dates affecting an entire tariff;

(5) Cancellations of either an entire tariff or previous supplements to a tariff; partial cancellations of any type are not to be filed as supplements.

(b) No more than one active supplement affecting any given tariff item shall be permitted at any given time; e.g., only one general rate increase supplement may be on file at any one time.

(c) Tariffs shall contain no more than four active supplements.

(d) Supplements shall contain either a list of participating carriers which conforms with § 550.5(b)(2) or a statement that the participating carriers are *as shown in the tariff* or *as shown in tariff amended as follows.*

(e) Tariff matter brought forward without change from one supplement to another shall be designated *reissued* and shall show the original effective date and the number of the supplement from which it was reissued.

(f) Supplements shall be numbered consecutively with the first to be issued designated number one: e.g., "Supplement No. 1 to FMC-F No. 3."

(g) The first page of every supplement shall:

(1) Contain the operating name of the publishing carrier as shown on the Title Page of the tariff being amended;

(2) Set out, in the upper right-hand corner and in the following order:

(i) The number of the supplement;

(ii) The series and number of the tariff being amended;

(iii) A statement (if applicable) that the supplement cancels a previous supplement or an entire tariff;

(iv) A statement indicating the numbers of all supplements currently in effect, e.g.:

Supplement No. 5 to FMC-F No. 3 cancels Supplement No. 2 FMC-F No. 3.

Supplements Nos 3, 4, and 5 contain all changes.

(3) Publish, in the upper right-hand corner, an effective date which conforms with § 550.10 (b) and (c).

(h) The issuance of a supplement shall require the revision of the Title Page of the tariff being amended (see § 550.5(a)(12)).

(i) Supplements containing more than one page shall be consecutively numbered (with the first page being page number one), shall be bound firmly at the left-hand edge, and may be printed on both sides of the page.

§ 550.12 Cancellation of tariffs.

(a) An entire tariff may be cancelled by:

(1) The issuance of a similar tariff to take its place which contains a cancellation notice printed on the Title Page in accordance with § 550.5(a)(4);

(2) The issuance of a consecutively numbered supplement which contains a cancellation notice printed on its first page in accordance with § 550.11(g)(2)(iii).

(b) Cancellation of an entire tariff automatically cancels all amendments or supplements thereto. Cancellation by supplement is permitted even if the tariff being cancelled contains the maximum number of active supplements allowed by § 550.11(c).

(c) A cancelling publication shall state the tariff(s) applicable to those services, if any, offered under the cancelled tariff which will continue to be offered by the participating carrier(s) and state where these continued services may be found in such tariff(s). If cancellation changes the rates or charges for any continued services, each change shall be indicated on the cancelling publication by the uniform symbols of § 550.5(b)(6)(i).

§ 550.13 Suspension of tariff matter.

(a) The Commission may suspend from use any rate, fare, charge, classification, regulation, or practice for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(b) Upon receipt of an order suspending a tariff publication in whole or in part, the carrier shall immediately post and file a supplement which:

(1) Bears an effective date coinciding with that of the applicable suspension order;

(2) Contains a notice which specifically indicates the suspended portion(s) of the publication;

(3) Contains a notice which specifically states any tariff provisions which remain effective in lieu of the suspended provisions;

(4) Reproduces those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(c)(1) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except by order or special permission of the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(2) All post suspension amendments shall be accompanied by a notation

immediately following the cancellation notation (see paragraphs (g)(2) (iii) and (iv) of § 550.11) and which states: "* * * except portions under suspension in Docket No. ——."

(d) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, cancelling or amending any tariff matter named in a subsequent suspension order, the suspension supplement required by paragraph (b) of this section shall specifically cancel from such intervening amendment the reissued, deleted, cancelled or amended material in question.

(e)(1) Should the Commission vacate a suspension order earlier than the date to which the subject tariff publication was originally suspended, the filing carrier may file a vacating supplement stating the date upon which the previously suspended tariff matter will take effect.

(2) Vacating supplements, unless otherwise provided by the Commission, may take effect on one day's notice. Should a carrier elect not to publish a vacating supplement, the suspended provisions will take effect on the date to which they were originally suspended.

(3) Should an order suspending a tariff in its entirety be vacated, the vacating supplement shall contain no tariff material other than the notice of vacating.

(f) Should the Commission subsequently cancel all or any part of a previously suspended tariff publication, the publishing carrier shall effectuate the cancellation by filing upon not less than one day's notice (or such other period as the Commission may specify), a supplement or revised page stating the date upon which such suspended matter was ordered cancelled.

(g) If suspended tariff matter is not cancelled prior to its effective date, it shall take effect automatically and the tariff matter which was continued in effect during the suspension period shall be cancelled automatically.

(h) Suspension, vacating and cancellation supplements issued pursuant to this section may be issued without regard to the requirements of § 550.11.

§ 550.14 Governing tariffs.

(a)(1) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be published separately as a *rules tariff, bills of lading tariff* or *equipment interchange tariff,* as provided in §§ 550.5(a)(8), (b)(7) and (b)(8)(xvii). For the purposes of this rule, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters are considered *rules tariffs.*

(2) Governing tariffs may be used only when expressly referenced by name and series/number designation in the governed tariff of rates or fares as prescribed by paragraphs (a)(8) and (b)(7) of § 550.5.

(b) Governing tariffs shall conform with all applicable provisions of § 550.5.

(c) A rule or regulation affecting freight rates or passenger fares may appear in only one governing tariff.

(d) A governing tariff containing a classification of commodities shall list all commodities in an orderly manner and a specific rating must be shown in connection with each commodity description employed. Rules applying to the classification must precede the list of commodities and shall be separately numbered. Such a classification is valid only in connection with and to the extent expressly provided for in the rate tariff(s) it governs.

[49 FR 38836, Oct. 1, 1984, as amended at 55 FR 10242, Mar. 20, 1990]

§ 550.15 Tariffs applicable to seasonal transportation service.

Tariffs naming rates, fares or rules applicable to all water routes which are closed to navigation during part of a year shall:

(a) Publish provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued, and

(b) Expressly provide for their own expiration at the close of the navigation season, or provide for a discontinuance/restoration of service by the publication, either on the Title Page or by an internal rule referenced on the Title Page, of provisions governing such seasonal discontinuance/restoration.

§ 550.16 Index of tariffs.

(a) Carriers participating in five or more active tariffs, either published in their own names or otherwise, shall publish, post and file an index of such tariffs designated as "FMC-I No. —." A notice period is not required for tariff indices; they may take effect upon filing.

(b) The Title Page of an Index of Tariffs shall follow the requirements of § 550.5, except that it shall not contain the material required by § 550.5(a) (5), (6), (7), (9), and (11), i.e., scope, statement of service, statement of rate types, effective and expiration date, and list of participating carriers. In addition, the Title Page shall bear the following notation:

This index contains a list of tariff publications in effect on (show publication date).

(c) The body of an Index of Tariffs shall list the following types of tariffs, as applicable, in the following order: specific commodities tariffs; general commodities tariffs; class tariffs; passenger tariffs; rules tariffs; miscellaneous tariffs.

(d)(1) Each tariff listed in an Index of Tariffs shall be accompanied by the following information, as applicable, arranged in a columnar manner: FMC series and number designation; operating name of publishing carrier; type of service and type of rates offered; and ports or points from, to and between which the tariff applies.

(2) Tariffs of each type named in paragraph (c) of this section shall be arranged in numerical order by FMC series and number designation.

(e)(1) Tariff indices shall be revised to reflect tariff changes within 30 days from the effective date of the addition or cancellation involved, either by filing and posting a supplement or by filing and posting a reissued index.

(2) Supplements to an Index of Tariffs shall be numbered consecutively, shall be arranged in the same order as the index, and shall show additions, modifications and cancellations by reference to the page and item numbers of the changed entries. Each new supplement shall bear the following notation on its Title Page:

Supplement Nos. — and — contain changes in effect on date thereof, or which have been filed to become effective at a later date as shown within.

§ 550.17 Transfer of operations, transfer of control and changes in carrier name.

(a) Whenever a carrier performing an ongoing service pursuant to duly posted and filed tariffs either: sells its common carrier operations to another person; transfers working control of its business to another person; or changes its operating or legal name, the person legally entitled to control the ongoing common carrier operation (the *adopting carrier*) shall simultaneously file:

(1) A one-page adoption notice numbered in the adopting carrier's FMC series, which states:

FMC-F (or -P or -G) No. —

(operating name of adopting carrier)

Adoption Notice

The (operating name of adopting carrier) hereby adopts, ratifies, and makes its own, in every respect ahd as if the same had been originally filed and posted by it, all freight (or passenger, rules or other) tariffs, notices, divisions, authorities, delegations of authority, or other instruments whatsoever, including supplements or amendments thereto, filed with the Federal Maritime Commission by, or heretofore adopted by, the —— (operating name of the carrier previously performing the adopted service) prior to —— (effective date of change in operating control).

Issued by (Issuing Official as per § 550.3(d) of this part).

Effective Date (see § 550.10(2)). [and]

(2)(i) A consecutively numbered, revised Title Page to each tariff being adopted, which contains the following statement:

Effective (*insert date*), this tariff became the tariff of (*insert operating name of adopting carrier*) pursuant to its adoption notice published in its Tariff FMC (*insert series and number designation*).

(ii) The revised Title Pages referred to in paragraph (a)(2)(i) of this section shall be accompanied by a letter of concurrence from an appropriate officer (not a tariff agent) of the previous carrier, stating the full details of the transaction necessitating the adoption, and the previous carrier's concurrence therein.

(b)(1) Tariffs adopted under this section shall be cancelled in their entirety within 90 days and shall not be supplemented or amended subsequent to adoption other than to accomplish said cancellation.

(2) The adopting carrier shall publish replacement tariffs under its own operating name and bearing its own consecutive FMC series and number designation to be effective the date following the last effective day of the cancelled tariff. The new tariff shall provide 30 days' notice of its effective date (see § 550.3(f)), and shall also cancel the adoption notice filed pursuant to paragraph (a) of this section.

(c) Tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the adopting carrier continues to participate in the service. The amendment shall delete all references to the adopted carrier (or old name) and substitute references to the adopting carrier (or new name) in their place. Similarly, all delegations of authority adopted by a new carrier (or affected by a name change) shall be replaced within 90 days by new delegations of authority issued by and numbered in the series of the new carrier. Such amendments shall provide 30 days' notice of their effective date (see § 550.3(f)).

(d) Should a carrier enter receivership, or otherwise come under the control of a trustee, the notices, cancellations and tariffs required by paragraphs (a) and (b) of this section shall be filed in the FMC series of the previous carrier by the receiver or trustee appointed. When the receivership/trusteeship is terminated, the successor to the ongoing common carrier operations (if any) shall also publish all notices, cancellations and tariffs required by paragraphs (a) and (b) of this section.

(e) Adoption of only part of the service extended under a given rate tariff is forbidden. When less than an entire existing operation is transferred to a successor carrier (or new carrier name), all current tariffs must be cancelled or otherwise amended and the successor carrier must file and post its own tariff(s) upon the 30 days' notice required for any new service (see § 550.3(f)).

§ 550.18 Applications for special permission.

(a) Upon a showing of good cause, the Commission may permit rate changes or the issuance of new or initial rates to take effect on short notice, and otherwise waive the requirements of this part.

(1) Special permission requests for authority to correct typographical errors must specify the error involved, include a full statement of the attending circumstances, and be presented with reasonable promptness after issuance of the defective tariff publication.

(2) Other special permission requests shall state the specific rules from which relief is requested, the special circumstances requiring relief, and the beneficial results to be obtained from the requested waiver.

(3) An application for special permission shall be accompanied by a $90 filing fee.

(b) Except upon petition directly to the Commission, special permission authority shall not be granted to:

(1) Allow a carrier to change rates or other tariff provisions on less than full notice for the purpose of meeting competition, where the competitor in question altered its rates/provisions on full notice; or

(2) Modify a formal order of the Commission.

(c) Authority granted by special permission must be used in its entirety and only in the manner set forth in such special permission.

(d) Special permission authority must be applied for by the same person that filed the tariff publication for which special permission is sought.

(e) In addition to the information required by paragraph (a) of this section, an application for special permission shall contain:

(1) An exact copy of the tariff matter the applicant proposes to file, clearly designated as an exhibit to the application, but otherwise in the form required by this part. If the proposed amendment consists of rate changes, all points of origin and destination must be stated in the application if not otherwise included in the exhibit. Tariff series and number destinations (including supplements, if applicable) and all cancellations which would be made must be shown.

(2) The names of carriers known to maintain provisions competitive to those for which the applicant seeks relief and a certification signed by the filing party that all such carriers have been served with a copy of the special permission application. Service by first class mail, postage prepaid, correctly addressed to the intended recipient's principal place of business, and posted no later than the date of filing, is acceptable where personal service is impractical.

(3) The entire application shall be signed and its accuracy sworn to by the filing party at a place within the United States, its commonwealths, territories, or possessions, pursuant to 28 U.S.C. 1746 (Pub. L. 94-550). Immediately following the text of the application and immediately preceding the signature of the filing party, there shall appear the statement:

I declare under penalty of perjury that the foregoing is true and correct. Executed at (insert place of execution)
on (insert date of execution)

(f) Special permission applications (including attachments thereto) shall be filed in duplicate.

(g) Special permission applications shall be filed in substantially complete form at least five working days prior to the effective date of the proposed tariff filing, except that petitions for waiver of this requirement may be granted if they are sworn to in the manner described in paragraph (e)(3) of this section and demonstrate that a genuine emergency justifying a shorter notice period exists.

(h) The Commission may, upon the application of interested persons, or upon its own motion, establish or rescind special permission authorities as it sees fit.

(i) Tariff publications filed pursuant to a grant of special permission shall publish the following notation at the bottom of each page of such publication (at the bottom of the first page only in the case of supplements):

Published under authority of Federal Maritime Commission Special Permission No. ——.

§ 550.19 Special rules for bound tariffs filed pursuant to special permission authority.

(a) Such bound tariffs as may be permitted to be filed by special permission are subject to this section, in addition to those other sections in this part which govern tariff filing generally.

(b) All pages of bound tariffs shall be firmly and permanently fastened together on the left edge by an appropriate binding method. The simple insertion of one or two staples in the binding edge shall not suffice to meet this requirement, but the binding process known as saddle stitching is acceptable.

(c) Section 550.4(a) is waived to the extent it requires bound tariff pages to be printed on only one side.

(d) Section 550.4(g) is waived to the extent it requires an effective date to be published on other than the Title Page of a bound tariff.

(e) Sections 550.5(a) and 550.11 are waived to the extent they require the Title Page of a bound tariff to reflect all supplements either issued or in effect.

(f) Supplements shall be the only method of amending bound tariffs. In addition to the requirements of § 550.11, the following shall apply to bound tariff supplements:

(1) They shall refer specifically to the page and item designation of the tariff/supplement item to be amended;

(2) Amendments to a numbered or otherwise designated item must publish the amended item in its entirety;

(3) Amendments to items shall bear the same designation as the item being amended with a consecutive letter suffix, and shall show the cancellation of the prior item edition, e.g., "Item 10-A, cancels Item 10"; "Item 10-B cancels Item 10-A," etc.

§ 550.20 Equipment interchange tariffs.

(a) Equipment interchange tariffs may be filed as provided in §§ 550.5(b)(8)(xvii) and 550.14(a)(1). They shall be filed in accordance with the tariff filing requirements of part 550 except as provided herein. The tariff shall be arranged in the following order:

(1) Title Page
(2) Check Sheet (optional)
(3) Table of Contents
(4) Explanation of Symbols, Abbreviations and Reference Marks
(5) Rules and Regulations
(6) Free Time and Charges—List of Exceptions to Standard Free Days and or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall include a list of ports or points served (§ 550.5(b)(3)), and Rule 17 (Use of Carrier Equipment, § 550.5(b)(8)(xvii)). Required Rules 1 through 16 shall be noted as *Not Applicable.*

[55 FR 10242, Mar. 20, 1990]

§ 550.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection:

Section	Current OMB Control No.
550.3 through 550.6	3072-0005
550.8 through 550.19	3072-0005

[49 FR 38836, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984]

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

Sec.
552.1 Purpose.
552.2 General requirements.
552.3 Certification
552.4 Access to and audit of records.
552.5 Definitions.
552.6 Forms.
552.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

SOURCE: 49 FR 38850, Oct. 1, 1984, unless otherwise noted.

§ 552.1 Purpose.

(a) The purpose of this part is to establish methodologies that the Federal Maritime Commission will utilize in evaluating the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers (VOCCs) subject to the provisions of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a) and 847) and to provide for the orderly acquisition of data essential to this evaluation. Compliance is mandatory and failure to file the reports required under this part may result in denial of rate increases or rejection of tariff pages implementing rate changes or penalties of up to $100 for each day of such default (46 U.S.C. app. 820(a)).

(b) The methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. However, the Commission may also employ other financial methodologies in order to achieve a fair and reasonable result.

(c) In evaluating the reasonableness of a carrier's rates, the Commission may consider, in addition to the rate of return of the filing carrier, the effect which approval or disapproval of the rates will have on other carriers in the Trade.

(d) The Commission reserves to itself the right to employ other bases for allocation and calculation and to consider other operational factors in any instance where it is deemed necessary to achieve a fair and reasonable result.

§ 552.2 General requirements.

(a) All persons engaged in common carriage via cargo vessels in the domestic offshore trades (except persons engaged in intrastate operations in Alaska and Hawaii) and required by the Intercoastal Shipping Act, 1933, to file tariffs with the Commission, shall execute and file, in duplicate, Statement of Financial and Operating Data (designated as FMC Form No. 377 for tug and barge operators and FMC Form No. 378 for vessel operators) for each domestic offshore trade served, with:

Federal Maritime Commission, Bureau of Tariffs, 1100 L Street, NW., Washington, DC 20573

(b) Annual statements under this part shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

(c)(1) Upon application, the Commission may grant reasonable extensions of the time limit prescribed by this section for filing the statements required by this part, provided that:

(i) The application for extension is received at least 15 days before the statements are due; and

(ii) The application states a specific date on or before which the required statements will be filed.

(2) The mere filing of an application for an extension will not necessarily act as a bar to the imposition of civil penalties for failure to comply with Commission regulations. Even in cases where extensions are granted, the Commission may suspend and investigate rates filed during the extension period.

(d) Upon application, the Commission may relieve a carrier from full compliance with this part and permit it to submit alternative data as the Commission deems acceptable, provided that:

(1) The application shows good cause and is accompanied by the data which the carrier proposes to submit in lieu of the required statements, or a description of that data; and

(2) The Commission finds compliance with this part unnecessary to fulfill its regulatory functions.

(e) Upon application, the Commission shall grant a waiver of the detailed reporting requirements to carriers which have earned gross revenues of $10,000,000 or less for the reporting period in a particular Trade and whose Trade revenues amount to 25 percent or less of the total revenue for the Trade in question. The application for waiver (Exhibit D) must be accompanied by a company-wide balance sheet and income statement. This waiver provision is applicable to annual reporting requirements and to filings of proposed rate changes in accordance with § 552.2(f).

(f) Whenever a carrier files with the Commission an increase in rates which would affect 50 percent or more of the rate items listed in all of its tariffs in a particular Trade, and which increase in rates would result in either: an increase of not less than 3 percent in the carrier's gross revenues in that Trade, or in an increase of less than 3 percent in the carrier's gross revenues in that Trade, but, when aggregated with other rate changes filed during the preceding twelve months which have also resulted in increases of less than 3 percent in the carrier's gross revenues in that Trade, would result in an increase of 9 percent or more in the carrier's gross revenues in that Trade, then such carrier shall simultaneously file in duplicate:

(1) Financial and operating data in support of proposed rate changes as follows:

(i) An *actual* midyear rate base exhibit (Exhibit A-a) and supporting schedules computed for a 12-month period commencing not more than fifteen (15) months prior to the date of filing the proposed rates;

(ii) A *projected* midyear rate base exhibit (Exhibit A-p) and supporting schedules computed for a 12-month period commencing on the first day of the month following the date on which the rate changes are proposed to become effective;

(iii) An *actual* income account exhibit (Exhibit B-a) and supporting schedules covering the 12-month period used to calculate rate base in paragraph (f)(1)(i) of this section;

(iv) A *projected* income account exhibit (Exhibit B-p) and supporting schedules for the 12-month period commencing on the first day of the month following the date on which the changed rates are proposed to become effective (taking into account the effect of the proposed rate changes); and,

(v) *Actual* and *projected* rate-of-return exhibits (Exhibits C-a and C-p) coinciding with the time periods covered by the income statements furnished in response to paragraphs (f)(1) (iii) and (iv) of this section.

(2) The work papers described in § 552.4.

(g) If a carrier files proposed rate changes within six (6) months after the end of its fiscal year, it may furnish its annual report under this part for the fiscal year in lieu of the schedules of actual data required in paragraphs (f)(1) (i) and (iii) of this section. The requirement to furnish schedules pertaining to future operations under the proposed rate changes would not be affected by this substitution.

(h) When a proposed rate change is filed which does not meet the criteria set forth in § 552.2(f), the following certification shall be submitted simultaneously with the tariff material:

Certification

I, [type or print name of officer] of [name of reporting company] certify, under the penalties of 18 U.S.C. 1001, that the proposed rate increase submitted herewith is not required by § 552.2(f) of 46 CFR part 552 to be accompanied by the financial and operating data described therein.

Signature: ——————————

Title: ——————————

Date: ——————————

(i) All financial and operating data filed in connection with proposed rate changes shall be made available to interested persons by the carrier upon request.

(j) Where it is necessary to allocate property, revenue (except *Net Passenger* and *Other Voyage* revenue), costs or expenses, the allocation shall be on a direct basis. If this is not practicable, allocation shall be made in the manner prescribed in § 552.6. However, if the gross revenue from *Other Services* does not exceed 5 percent of the total company gross revenue, no allocation of revenue and expense between *Other Services* and the *Service* (see definitions, paragraphs (a) and (b) of § 552.5) is required by this part. Further, if the gross revenue from *Other Cargo* does not exceed 5 percent of the total gross revenue from the *Service*, no allocation of revenue and expense between *Other Cargo* and *The Trade* (see definitions, paragraphs (c) and (e) of § 552.5) is required.

(k) All carriers subject to these filing requirements must comply fully with the instructions outlined in this part for the submission of specified data and with the methods prescribed for its preparation. A carrier may request relief from full compliance in accordance with the provisions of paragraphs (d) and (e) of § 552.2. If a carrier has no information to report on a required schedule, it must submit a blank schedule with the word "NONE" printed across its face.

(l) With respect to the annual statements required by this part, all data shown must conform or be reconciled to the figures listed in the balance sheet and income statement filed therewith.

(m) All percentage calculations required by allocations herein shall be carried to two places beyond the decimal point (e.g., 97.54 percent).

(n) Whenever a carrier files an initial tariff, it shall simultaneously file a company-wide balance sheet and income statement together with the data required in Exhibit E. If a carrier is operating in another domestic offshore trade and has already filed the requisite annual data, only the data set forth in Exhibit E will be required.

(o) For the purpose of all reports required under this part, a carrier may employ terminated voyage or period accounting, at its election, and shall identify the method utilized. A carrier may change accounting methods for the purpose of such reports only with the prior written consent of the Commission.

(p) Related company assets employed in the Service shall be reported in the same manner as owned assets. Other intercompany transactions shall be shown net of intercompany profit and reported on the appropriate schedule. Any calculations involving intercompany accounts shall be included in the working papers.

§ 552.3 Certification.

The data required by this part shall be accompanied by a certification by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier, stating that:

(a) The books of account have been maintained in accordance with an appropriate system of accounts;

(b) The exhibits and schedules have been prepared from the regularly maintained books and records of the carrier;

(c) The records so maintained conform to, are reconciled to, or represent the actual financial data subject to the annual independent financial audit;

(d) The allocations have been made in accordance with the rules promulgated in this part; and,

(e) The financial and statistical data used are supported by an appropriate information gathering system having proper internal controls which have been tested for accuracy.

§ 552.4 Access to and audit of records.

(a) The carrier shall file with the Commission all work papers, properly cross-referenced and indexed, which were prepared in support of the exhibits and schedules. In addition, the books and records of the carrier and any related company whose financial data is included in any of the exhibits or schedules shall be made available for examination upon request by appropriate Commission personnel. Commission personnel shall be permitted to make copies of these records to the extent they deem necessary.

(b) For all proposed rate changes as described in § 552.2(f), the carrier shall submit a detailed description of the methods employed in projecting revenues.

[49 FR 38850, Oct. 1, 1984, as amended at 50 FR 32068, Aug. 8, 1985]

§ 552.5 Definitions.

For the purpose of this part, the following terms are expressly limited to the definitions listed below:

(a) *Voyage* means a completed round trip from port of origin and return to port of origin. A voyage cannot be split to separately reflect outbound and inbound services. However, when a vessel is reassigned to a new United States basing point, then the voyage runs from the old United States port of origin to the new United States port of origin. Should a vessel sail outbound in the Service and then proceed to another service, the voyage will be considered to be terminated upon completion of the offloading of the last cargo in the Service. Carriers which are party to operating differential subsidy contracts may use Maritime Administration commencement and termination guidelines for the purposes of this part.

(1) Voyages generally are considered to be terminated on the completion of the latest occurring event of one of the following:

(i) Crew paid off;

(ii) Discharge of last inbound cargo;

(iii) Completion of repairs (excluding annual overhaul and emergency repairs); or

(iv) Midpoint in time of operations in which cargo is simultaneously onloaded and off-loaded.

(2) Usually voyage termination will be considered to have happened at noon or midnight of the day on which the determining operation is completed. If a carrier has difficulty in applying this definition of the word *voyage* to its operations, it may identify the method it uses to determine a voyage and explain the reasons for this alternative definition for the Commission's consideration and approval.

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under part 550 of this chapter is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under part 550 of this chapter, more extensively defined below under *Domestic Offshore Trade.*

(d) *Other services* means those voyages or terminal facilities other than those in the relevant Service (e.g., a voyage to a foreign port on which no regulated cargo was carried, or a terminal facility in a foreign country).

(e) *Other cargo* means that part of the Service not included in the Trade.

(f) *Domestic offshore trade* means the carriage of common carrier cargo under the terms of a tariff(s) on file with and regulated by the Commission between any one of the five areas of the Continental United States listed in paragraph (f)(1) of this section and one non-contiguous area of the United States (see paragraph (f)(2) of this section), or between two non-contiguous areas of the United States. Where service is offered to or from two or more areas at the same rates (e.g., Atlantic Coast to Puerto Rico and the Virgin Islands) and listed as such in a single tariff, the carriage of cargo to or from those two or more areas may be treated as one domestic offshore trade for the purposes of this part.

(1) The five areas of the Continental United States are:

(i) North Atlantic (Maine to, but not including, Hatteras, North Carolina);

(ii) South Atlantic (Hatteras, North Carolina to, but not including, Key West, Florida);

(iii) Gulf (Key West, Florida to and including Brownsville, Texas);

(iv) West Coast; and

(v) Great Lakes.

(2) The non-contiguous areas of the United States (including, but not limited to those) to which service is offered under the terms of tariffs on file with the Commission, are:

(i) American Samoa;

(ii) Northern Marianas;

(iii) Guam;

(iv) Johnston Island;

(v) Midway Island;

(vi) Alaska;

(vii) Hawaii;

(viii) Puerto Rico;

(ix) U.S. Virgin Islands; and

(x) Wake Island.

(g) *Cargo vessel* means a self-propelled or non-self-propelled vessel which transports cargo, but not including vessels which are authorized to carry more than 12 passengers.

(h) *Cargo cube* means the product of the outside dimensions of a unit of cargo expressed in cubic feet. In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used. The height of equipment moving on wheels shall be measured from the ground to the highest point on the equipment. Empty equipment, such as containers, shall be included in the computation of cargo cube only if it is a revenue-producing unit of cargo. Where an operator finds it more convenient to accumulate such data in terms of twenty-foot equivalent units (TEU's) or metric quantities, these units may be used instead of cargo cube in all instances where cargo cube is cited in this part. Where any of these options are exercised, the operator shall modify the headings on the prescribed reporting forms to indicate the units in which the data is being reported and shall convert the data to TEU's where so provided in the schedules. For purposes of this part, carriers are not required to tape measure each unit (e.g., container, trailer, box, carton). However, the computation of cargo cube must be based upon careful consideration of all evidence available to the carrier, including documents, the opinions of experienced operating personnel, and sample measurements. In calculating the cube of containers, trailers, or other similar equipment, the carrier may assign a standard length, width and height to a given class of equipment, provided that the actual dimensions of each piece of equipment in the class vary no more than a foot from the standard dimensions adopted.

(i) *Measurement ton*—Equals forty (40) cubic feet.

(j) *Metric measurement ton*—Equals 35.31 cubic feet or 1 cubic meter.

(k) *Twenty-foot equivalent unit (TEU)*—Equals 1,280 cubic feet, based on the standard 20′ x 8′ x 8′ container.

(l) *Cargo cube relationship* means the ratio of total cargo cube for all cargo carried in the Trade to total cargo cube for all cargo carried in the Service.

(m) *Cargo cube miles* means the product of the cargo cube carried between each port of origin and destination, multiplied by the number of nautical miles representing the shortest navigable distance between the two ports as set forth in *Distance Between Ports* (Department of the Navy, Oceanographic Office), *Distance Between United States Ports* (U.S. Department of Commerce, Coast and Geodetic Survey) or, if not listed in either of these publications, as approved by the Commission. Where revenue derived from the carriage of passengers and Other Services is treated as a reduction of costs under § 552.6(c)(2)(iii), the cargo cube, if any, from which such revenue is derived shall be omitted from the cargo-cube mile calculations required herein.

(n) *Cargo-cube mile relationship* means the ratio of cargo-cube miles for all cargo carried in the Trade to total cargo-cube miles for all cargo carried in the Service. Because the total of all cargo-cube miles will normally involve a figure of considerable magnitude, the data shall be submitted in terms of thousands of cargo-cube miles. Where the service of the carrier is solely between port pairs in the Trade, and where there are no significant mileage differences between all such port pairs and the ocean rates between all such port pairs are identical, the cargo-cube relationship may be used in lieu of the cargo-cube mile relationship.

(o) *Voyage expense* means:

(1) For carriers required to file Form FMC-378: the total of Vessel Operating, Vessel Port Call and Cargo Handling Expenses less Other Shipping Operations Revenue.

(2) For carriers required to file Form FMC-377: the total of Transportation, Terminal and Traffic Expenses.

(p) *Voyage expense relationship* means the ratio of total Trade Voyage Expense to total Company Voyage Expense.

(q) *Related companies* means companies or persons that directly or indirectly (through one or more intermediaries) control, or are controlled by, or are under common control with, the reporting carrier. The term *control* shall include actual as well as legal control, whether maintained or exercised through (or by reason of) the circumstances surrounding organizational structure or operation, through (or by) common directors, officers, stockholders, voting trust(s), holding or investment company or companies, or through (or by) any other direct or indirect means, including the power to exercise control.

(r) *Initial tariff* means the first filing of a tariff by a carrier in a specific domestic offshore trade, or the filing of a tariff in a Trade where the carrier does not have an active tariff.

(s) *Trade operating expense* means the total of all expenses shown on Exhibit B (Income Account), including Federal income taxes.

(t) *Company operating expense* means the total of all expenses shown on the company-wide income statement, including Federal income taxes.

(u) *Operating expense relationship* means the ratio of Trade Operating Expense to total Company Operating Expense.

[49 FR 38850, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984, as amended at 50 FR 32068, Aug. 8, 1985; 51 FR 17025, May 8, 1986]

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver; and
Exhibit E—Initial Tariff Filing Supporting Data.

(2) Statements containing the required exhibits and schedules, are described in paragraphs (b), (c), (d), (e) and (f) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in Forms FMC-377 and FMC-

378. For carriers required to file Form FMC-378, the statements are based on the *Uniform Financial Reporting Requirements* prescribed by the Maritime Administration, U.S. Department of Transportation. For carriers required to file Form FMC-377, the statements are based on definitions contained therein. The schedules contained in these statements are distinguished from those contained in the Form FMC-378 statements by the suffix 'A" (e.g., Schedule A-IV(A)).

(b) *Rate base* (*Exhibits A and A*(*A*))—(1) *Investment in vessels* (*Schedules A-I and A-I*(*A*)). Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, *plus* the cost of improvements, conversions, and alterations, *less* the cost of any deductions. All additions and deductions made during the period shall be shown on a *pro rata* basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called Adjusted Cost.

(i) The cargo vessels employed in the Service shall be categorized and treated separately as follows:

(A) For those cargo vessels employed exclusively in the Service for the entire period, inclusive of normal periodic lay-ups, the Adjusted Cost shall be included in the total to be allocated to the Trade. If a vessel is permanently withdrawn from the Service during the period and laid-up pending disposition and that vessel has been employed exclusively in the Service for the preceding 12 months, sixty days of the lay-up period may be assigned to the Service. If a vessel is withdrawn from the Service for renovation or converison, and if the carrier certifies that that vessel has been employed exclusively in the Service for the 12-month period immediately prior to withdrawal and will be employed exclusively in the Service for a period of at least 12 months after the renovation or conversion is completed, the Adjusted Cost shall be included in the total to be allocated to the Trade.

(B) For those cargo vessels employed in the Service for less than the entire period, the Adjusted Cost shall be prorated between voyages in the Service and voyages in Other Services. The total number of days of service excludes lay-up days and is therefore likely to be less than the number of days in the reporting period. Lay-up days of vessels in this category will normally be allocated to the respective Services on the same basis used in allocating the Adjusted Cost of such vessels, i.e., active days. However, if one or more of the vessels normally employed in the Service has been diverted temporarily to Other Services in lieu of incurring lay-up expense, no assignment of lay-up time to Other Services is required. That portion of the Adjusted Cost of the vessels not allocated to Other Services shall be included in the total to be allocated to the Trade.

(ii) The total of the adjusted cost of all vessels employed in the Service during the period which has not been allocated to Other Services, as required in § 552.6(b)(1)(i)(B), shall be allocated to the Trade in the cargo cube mile relationship.

(2) *Accumulated depreciation—vessels* (*Schedules A-II and A-II*(*A*)). (i) Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service shall be listed separately. For vessels owned the entire year, accumulated depreciation as of the beginning and the end of the year shall be reported and the arithmetic average computed. This amount shall be allocated to the Service and to the Trade in the same proportions as the cost of the vessel was allocated on Schedule A-I or A-I(A). If the depreciable life of any equipment installed on a vessel differs from the depreciation life of the vessel, the cost and the depreciation bases shall be set forth separately.

(ii) For any vessels disposed of during the period, a proportional reduction shall be made in accumulated depreciation corresponding to the similar deduction required by § 552.6(b)(1). The accumulated depreciation upon which the proportional reduction is calculated shall be the average of the accumulated depreciation at the beginning of the year and at date of disposal.

(iii) For any vessels acquired during the period, a proportional addition shall be calculated as one-half of the accumulated depreciation on that vessel at the end of the year.

(3) *Vessel statistics (Schedules A-III and A-III(A)).* Carriers shall provide vessel statistics as required by Schedule A-III or A-III(A).

(4) *Investment in other property and equipment; accumulated depreciation other property and equipment (Schedules A-IV and A-IV(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, in other fixed assets employed in the Service shall be reported as of the beginning of the year. Accumulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. Additions and deductions during the period shall also be reported, and the carrier shall report as though all such changes took place at midyear, except for those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the voyage expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

(ii) With respect to any significant deductions, accumulated depreciation shall be proportionately reduced as required by § 552.6(b)(2)(ii).

(5) *Working capital (Schedule A-V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining the vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense and Interest Expense allocated to the Trade as provided in paragraphs (c) (2), (4) and (5) of this section. For this purpose, if the average voyage, as determined above, is of less than 90 days duration, the expense of hull and machinery insurance and protection and indemnity insurance shall be determined to be 90 days, provided that such allowance for insurance expense shall not, in the aggregate, exceed the total actual insurance expense for the period.

(6) *Working capital (Schedule A-V(A)).* Working capital for tug and barge operators shall be determined as the average monthly expense. Average monthly expense shall be equal to one-twelfth of the expense of the carrier during the relevant 12-month period, computed by adding Voyage Expense, Administrative and General Expense, Interest Expense, and Inactive Vessel Expense, each as allocated to the Trade, and dividing the total by 12.

(7) *Property and equipment of related companies.* Property and equipment of related companies used by the filing carrier in the Trade shall be reported in accordance with paragraphs (b) (1), (2) and (4) of this section. The cost of such assets shall be that which is recorded on the books of the related company. Where such assets are included in the rate base, the profits or losses from intercompany transactions related to such assets are to be eliminated in accordance with paragraph (c)(11) of this section.

(8) *Capitalization of interest during construction (Schedules A-VI and A-VI (A)).* (i) Interest shall be capitalized on all funds (including the carrier's own funds) actually employed in the design, engineering study, performance inspection, construction, reconstruction or reconditioning of a capital asset. Such asset shall be owned in the carrier's name or in the name of any of its related companies. Should a carrier capitalize interest on its assets or

those of related companies, it shall produce any information related to these assets upon request of the Commission. Interest on funds expended shall be eligible for capitalization when all of the following conditions and requirements are met:

(A) The construction period is 12 months or greater. The construction period begins when construction work commences on the asset and ends when the asset is ready for use by the carrier. Strike periods during which construction is delayed for 8 or more consecutive days shall not be included in determining whether the 12-month requirement is met; and,

(B) Payments are made on a periodic basis during the period of design and construction.

(ii) Interest shall be calculated starting with the first payment and on each subsequent payment thereafter. The rate employed shall be the average prime rate for the month in which the payment is made, as set forth in the *Federal Reserve Bulletin.*

(iii) A detailed description of the interest calculations shall be submitted for each capital asset included in the rate base of the carrier in the first year of its inclusion. Such description shall be set forth on Schedule A-VI or A-VI(A), *Capitalization of Interest During Construction.* Capitalized interest shall be included in the rate base when the asset is included in the rate base, in accordance with paragraph (b) of this section, and in the same allocable amounts as the asset. A schedule shall be provided each time a rate base statement is submitted, setting forth the year in which an interest calculation statement was submitted for each asset which included capitalized construction interest in the rate base.

(iv) The effects of the interest-during construction provisions shall be applicable to all work completed after December 31, 1977.

(9) *Capitalization of leases* (*Schedules* (*A-VIII and A-VII* (*A*)). Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A-VII or A-VII(A), *Capitalization of Leases,* shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization schedule. Allocations to the Trade shall follow the requirements of paragraphs (b) (1) and (4) of this section.

(c) *Income account* (*Exhibits B and B*(*A*))—(1) *Operating revenue* (*Schedules B-I and B-I*(*A*)). (i) Revenue allocated to the Trade shall include only revenue earned from the common carriage of cargo in the domestic offshore Trade during the period, except that minor amounts of other cargo may be considered trade cargo in accordance with § 552.2(j). Revenue figures shall be reported in total for the Trade and separately for each of the 15 inbound commodities (listed by tariff descriptions) producing the highest revenues for the inbound portion of the Trade, and for each of the 15 outbound commodities (listed by tariff descriptions) producing the highest revenues for the outbound portion of the Trade. Where fewer than 15 commodities account for at least 90 percent of the total revenue for either the inbound or outbound portion of the Trade, only those commodities need be separately reported. Where the same commodity is carried under several tariff designations having different rates (e.g., potatoes refrigerated, potatoes non-refrigerated, potatoes in bags, potatoes in containers), each of these tariff designations shall be considered as an individual commodity.

(ii) Where the applicable tariff establishes a single freight-all-kinds (FAK) rate for containers that may hold more than one commodity, individual commodity designations shall be disregarded in considering that tariff item for purposes of paragraph (c)(1)(i) of this section.

(2) *Voyage expense* (*Schedule B-II*). This schedule shall be submitted by vessel operators for any period in which any cargo was carried in the Service. Allocations to the Trade shall be on the following basis:

(i) For all voyages in the Service, vessel expense shall be allocated to the Trade in the cargo-cube mile or cargo cube relationship, as appropriate. Should any of the elements of vessel expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Vessel port call and cargo handling expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Other Shipping Operations Revenue shall be deducted from Gross Voyage Expense. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

(3) *Voyage expense* (*Schedule B-II(A)*). This schedule shall be submitted by tug and barge operators:

(i) For all voyages in the Service, transportation expense shall be allocated to the Trade in the cargo-cube mile or cargo-cube relationship, as appropriate. Should any elements of transportation expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Terminal and traffic expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Where multiple barge units are towed by a single tug, voyage expense shall be allocated on the basis of the cargo-cube relationship.

(4) *Administrative and general expense* (*Schedules B-III and B-III(A)*). Administrative and general expenses, (A&G) shall be allocated to the Trade using the voyage expense relationship. Direct assignments should be made where practical, particularly with respect to advertising expense related to the operation of passenger and combination vessels. Any direct assignment shall be set forth and explained. Charitable contributions shall not be allocated to the Trade. In those instances where a carrier is engaged in other business in addition to shipping, A&G should be allocated to each business in the ratio of total operating expenses for each business (*less* A&G and income taxes) to total company operating expenses (*less* A&G and income taxes).

(5) *Interest expense and debt payments* (*Schedules B-IV and B-IV(A)*). This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base *less* working capital bears to company-wide assets *less* current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with paragraph (b)(9) of this section, a deduction shall be made for the amount so capitalized.

(6) *Inactive vessel expense* (*Schedules B-V and B-V(A)*). Inactive vessel expense shall, in general, be allocated by vessel on the same basis as the investment in such vessel is included in the rate base. Inactive vessel expense applicable to vessels not used in the Service shall be excluded.

(7) *Depreciation and amortization* (*Schedules B-VI and B-VI(A)*). Depreciation and amortization of assets included in the rate base shall be allocated on the same bases as are the specific assets.

(8) *Construction-differential subsidy refund* (*Schedule B-VII*). Construction differential subsidy refunds paid or payable to the Maritime Administration in connection with vessels employed on a part-time basis in the Service and applicable to the period for which a report is being made shall be allocated to the Trade in the ratio that the cargo-cube miles of cargo carried in the Trade bear to the total cargo-cube miles of cargo in the Service. Calculation of expenses incurred due to construction-differential subsidy refunds must be reported on Schedule B-VII.

(9) *Other revenue or expense* (*Schedules B-VIII and B-VII(A)*). (i) Any other elements of revenue or expense, wholly or partially applicable to the

Trade, shall be fully explained by a schedule showing details of allocation.

(ii) Operating-differential subsidy refunds under section 605(a) of the Merchant Marine Act, 1936, shall not be allocated to the Trade.

(10) *Provisions for income tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate.

(11) *Related company transactions.* Income account transactions with related companies shall be shown net of intercompany profit on the appropriate schedule and allocated to the Trade on the same basis as other items in that schedule.

(d) *Rate of return (Exhibits C and C(A))*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios.

(2) *Return on rate base.* (i) The return on rate base will be computed by *dividing* Trade net income plus interest expense *by* Trade rate base.

(ii) The reasonableness of a carrier's return on rate base will be based on a comparative analysis of the carrier's projected return on rate base with the rate of return on total capital earned by comparable U.S. corporations. This technique, the comparable earnings test, is based on an analysis of the earnings of U.S. corporations over an extended period of time. From these time/series data, the average rate of return earned by U.S. corporations is computed, and, where appropriate, adjusted for current trends in rates of return, the cost of money and relative risk.

(3) *Fixed charges coverage ratio.* (i) The fixed charges coverage ratio shall be computed by *dividing* the total of net income, interest expense, depreciation and amortization expense, and the provision for income taxes as allocated to the Trade *by* the Trade fixed charges. Fixed charges applicable to the Trade are the total of interest expense, principal payments, and capitalized lease obligations;

(ii) In order to evaluate the reasonableness of a carrier's fixed charges coverage ratio, the staff will analyze the debt-coverage ratios for a variety of entities including, but not limited to: (A) Public utilities; (B) government-owned corporations; (C) rural electric cooperatives; (D) various municipal enterprises such as airports and hospitals; and (E) various sectors of the transportation industry, including subsidized and unsubsidized ocean carriers. The staff will analyze the subject carrier's debt-coverage ratio in light of the nature of its debt structure (i.e., long term or short ter[illegible], the overall risk conditions facing the carrier and the market environment within which the carrier is operating.

(4) *Operating ratio.* (i) The operating ratio will be computed by *dividing* total Trade expenses (adjusted for related company transactions) *by* total Trade revenue.

(ii) The reasonableness of a carrier's operating ratio will be determined by comparing it to the operating ratios of other regulated and non-regulated companies, adjusted for relative risk. In conjunction with the operating ratio, the staff may also consider other financial ratios, such as: (A) Current; (B) leverage; and (C) turnover. The carrier's stability in earnings as compared to that of other firms will also be considered.

(e) *Application for waiver (Exhibits D and D(A)).* (1) Carriers requesting a waiver of the filing requirement of this part must submit an application (Exhibit D) and the information required in § 552.2(e).

(2) The data submitted with the application must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data submitted with the application have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

(f) *Initial tariff filing supporting data (Exhibits E and E(A)).* (1) Carriers filing initial tariffs as defined in § 552.5(r) shall complete and file Exhibit E and the information required in § 552.2(n).

(2) The data submitted with the filing must be certified by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the carrier. The certificate shall be notarized and state that the data have been prepared from the regularly maintained books and records of the carrier and that, to the best of the certificant's knowledge, the facts submitted are true and correct.

[49 FR 38850, Oct. 1, 1984, as amended at 50 FR 32068, Aug. 8, 1985; 51 FR 17026, May 8, 1986]

§ 552.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0008.

[54 FR 34182, Aug. 18, 1989]

PART 553—FINANCIAL EXHIBITS AND SCHEDULES OF NON-VESSEL-OPERATING COMMON CARRIERS IN THE DOMESTIC OFFSHORE TRADES

Sec.
553.1 Purpose.
553.2 General requirements.
553.3 Certification.
553.4 Access to and audit of records.
553.5 Definitions.
553.6 Forms.
553.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; secs. 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841); secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

SOURCE: 49 FR 38856, Oct. 1, 1984, unless otherwise noted.

§ 553.1 Purpose.

(a) The purpose of this part is (1) to establish the methodology that the Federal Maritime Commission (Commission) intends to follow in evaluating proposed rate changes in the domestic offshore trades submitted by non-vessel-operating common carriers (NVO's) subject to the provisions of the Intercoastal Shipping Act, 1933, and (2) to provide for the orderly acquisition of the data required for the methodology so established.

(b) The Commission will employ the operating ratio methodolgy when evaluating proposed rate changes by NVO's, except in any instance where, in its opinion, the application of the operating ratio creates an unreasonable result.

(c) Filing of the information is required only in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes. Compliance in those instances is mandatory and failure to file the required reports may result in penalties of up to $100 for each day of such default (46 U.S.C. app. 820).

§ 553.2 General requirements.

(a) The rules contained herein are those issued by the Commission to meet the specific requirements of the Intercoastal Shipping Act, 1933, as amended, and will be used to evaluate proposed rate changes in the domestic offshore trades. However, the Commission reserves to itself the right to employ other bases for allocation and calculation in any instances where, in its opinion, the application of the rules and regulations prescribed herein create unreasonable results.

(b) Whenever the Commission institutes an investigation and hearing to determine whether or not an increase or decrease in rates which would affect not less than 50 percent of the tariff items of that NVO in a particular Trade, or which would result in an increase or decrease or not less than 3 percent in its gross revenues in that particular Trade, is just and reasonable, the NVO shall file in duplicate, within 30 days of the publication in the FEDERAL REGISTER of the order instituting the investigation and hearing, the following:

(1) An *actual* company-wide balance sheet (Exhibit A-a) as of a date not more than three months prior to the date of filing the proposed rates.

(2) An *actual* statement of income (Exhibit B-a) and supporting schedules covering a 12-month period ending the same date as the balance sheet required in paragraph (b)(1) of this section.

(3) A *projected* statement of income (Exhibit B-p) and supporting schedules for the 12-month period commencing on the first day of the month following the date on which the changed rates are proposed to become effective (taking into account the effect of the proposed changes); and

(4) *Actual* and *projected* operating ratios described in § 553.6(d) coinciding with the time periods covered by the statement of income required in paragraphs (b)(2) and (b)(3) of this section.

(5) A supplementary data exhibit (Exhibit C) described in § 553.6(e) corresponding to the date of the balance sheet furnished in response to paragraph (b)(1) of this section.

(6) The work papers described in § 553.4(b).

(c) Revenue (except Other Revenue) and costs shall be assigned directly whenever possible, otherwise allocation shall be made in the manner prescribed in § 553.6. However, if the gross revenue from Other Operations does not exceed 5 percent of the total company gross revenue, no segregation of revenue and expenses between Other Operations and the Trade (see definitions, § 553.5(b) and 553.5(c)) is required by this part.

(d) All NVO's subject to these requirements must comply in all material respects with the instructions outlined herein, both as to the submission of the specified exhibits and schedules and as to compliance with the methods prescribed for their preparation. If an NVO has nothing to report on a required schedule, it must submit the schedule with the word "NONE" printed across its face.

(e) All percentage calculations required by allocations herein shall be carried to two places beyond the decimal point, (e.g., 97.54 percent).

[49 FR 38856, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984]

§ 553.3 Certification.

The data required by this part shall be accompanied by a certification by the corporate officer responsible for the maintenance and accuracy of the books of account and financial records of the NVO, stating that:

(a) The books of account have been maintained in accordance with an appropriate system of accounts;

(b) The exhibits and schedules have been prepared from the regularly maintained books and records of the NVO;

(c) The records so maintained conform to, are reconciled to, or represent the actual financial data subject to the annual independent financial audit;

(d) The allocations have been made in accordance with this part; and,

(e) The financial and statistical data used are supported by an appropriate information gathering system having proper internal controls which have been tested for accuracy.

§ 553.4 Access to and audit of records.

(a) Every NVO shall maintain its records and books of account in an orderly and systematic manner. These records must be kept in such manner as to permit the timely preparation of the exhibits and schedules described in § 553.6(a). As a minimum requirement, every NVO shall retain those records necessary to prepare the documents described in § 553.6(a) for a period of 3 years.

(b) Exhibits and schedules submitted as part of this requirement are to include: (1) All work papers, properly cross-referenced and indexed, which were prepared in support of the exhibits and schedules, and (2) a detailed description of the methods employed in projecting revenues.

(c) In addition, the books and records of the NVO and those of any related company whose financial data is included in any of the exhibits or schedules shall be made available upon request for examination by appropriate Commission personnel. Commission personnel shall be permitted to make copies of these records to the extent they deem necessary.

(d) All exhibits and schedules submitted as part of the filing requirements are to include the work paper reference numbers so that amounts shown can be readily traced to the appropriate work paper.

§ 553.5 Definitions.

For the purpose of this part, the following terms are expressly limited to the definitions listed below:

(a) *The Service* means all activities and operations of the NVO, including those regulated by the Commission.

(b) *Other operations* means that part of the Service not subject to the Commission's jurisdiction under 46 CFR part 550, such as cargoes moving in the foreign commerce of the United States or those regulated by the Interstate Commerce Commission.

(c) *The Trade* means that part of the Service subject to the Commission's jurisdiction under 46 CFR part 550, and as defined under *Domestic Offshore Trade* (below).

(d) *Domestic offshore trade* means the transportation and handling of common carrier cargo under the terms of a tariff(s) on file with and regulated by the Commission between any one of the five areas of the Continental United States listed in paragraph (d)(1) of this section and one non-contiguous area of the United States listed in paragraph (d)(2) of this section or between two non-contiguous areas of the United States. Where service is offered to or from two or more areas at the same rates (e.g., Atlantic Coast to Puerto Rico and the Virgin Islands) and listed as such in a single tariff, the carriage of cargo to or from those two or more areas may be treated as one domestic offshore trade for the purpose of this part.

(1) The five areas of the Continental United States are:

(i) North Atlantic (Maine to, but not including Hatteras, North Carolina);

(ii) South Atlantic (Hatteras, North Carolina to, but not including Key West, Florida);

(iii) Gulf (Key West, Florida to and including Brownsville, Texas);

(iv) West Coast; and

(v) Great Lakes.

(2) The non-contiguous areas of the United States (including, but not limited to those) to which service is offered under the terms of tariffs on file with the Commission are:

(i) American Samoa;

(ii) Northern Marianas;

(iii) Guam;

(iv) Johnston Island;

(v) Midway Island;

(vi) Puerto Rico;

(vii) Alaska;

(viii) Hawaii;

(ix) U.S. Virgin Islands; and

(x) Wake Island.

(e) *Cargo cube* means the product of the outside dimensions of a unit of cargo expressed in cubic feet. In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used. The height of equipment moving on wheels shall be measured from the ground to the highest point on the equipment. Empty equipment, such as containers, shall be included in the computation of cargo cube only if it is a revenue-producing unit of cargo. Where a NVO finds it more convenient to accumulate such data in terms of twenty-foot equivalent units (TEU's) or metric quantities, these units may be used instead of cargo cube in all instances where cargo cube is cited in this part. Where any of these options are exercised, the NVO shall modify the headings on the prescribed reporting forms to indicate the units in which the data is being reported. For purposes of this part, NVOs are not required to tape measure each unit (e.g., container, trailer, box, carton). However, the computation of cargo cube must be developed after careful consideration of all evidence available to the NVO, including loading documents, the opinions of experienced operating personnel, and sample measurements. In calculating the cube of containers, trailers, or other similar equipment, the NVO may assign a standard length, width and height to a given class of equipment, provided that the actual dimensions of each piece of equipment in the class vary no more than a foot from the standard dimensions.

(f) *Measurement ton*—Equals forty (40) cubic feet.

(g) *Metric measurement ton*—Equals 35.31 cubic feet, based on the standard 20′x8′x8′ container.

(h) *Twenty-foot equivalent unit (TEU)*—Equals 1,280 cubic feet, based on the standard 20′x8′x8′ container.

(i) *Cargo cube relationship* means ratio of total cargo cube for all cargo carried in the Trade to total cargo cube for all cargo carried in the Service.

(j) *Line-haul transportation* means all transportation of freight on land other than pickup and delivery and local terminal operations. An example of this would be substituted service, i.e., charging the water rates but moving the cargo part of the way by land.

(k) *Pickup and delivery* means the service provided by the NVO, or its agent, of picking up and delivering cargo from or to a shipper's or consignee's place of business or other location designated by the shipper or consignee pursuant to the NVO's tariff(s) on file with the Commission and not subject to regulation by any other regulatory body.

(l) *Related company* means any company or person that directly or indirectly (through one or more intermediaries) controls, or is controlled by, or is under common control with, the reporting NVO. The term *control* shall include actual as well as legal control, whether maintained or exercised through (or by reason of) the circumstances surrounding organizational structure or operation, through (or by) common directors, officers, stockholders, voting trust(s), holding or investment company or companies, or through (or by) any other direct or indirect means, including the power to exercise control.

(m) *Total trade operating expenses* means the total amount allocated to the Trade for the following expenses: ocean transportation, line-haul transportation, pickup and delivery and terminal.

(n) *Total company operating expenses* means the company-wide total of the following expenses: ocean transportation, line-haul transportation, pickup and delivery and terminal.

(o) *Operating expense relationship* means the ratio of total Trade operating expenses to total Company operating expenses.

§ 553.6 Forms.

(a) *General.* (1) The information required by this part shall be submitted in the prescribed format and shall include:

Exhibit A—Balance Sheet;
Exhibit B—Statement of Income and Supporting Schedules;
Exhibit C—Supplementary Data.

(2) The required exhibits and schedules are described in paragraphs (b), (c), (d) and (e) of this section, and are available upon request from the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573 (FMC Form 579).

(b) *Balance sheet (Exhibit A).* The balance sheet shall be prepared from the NVO's books and records in accordance with generally accepted accounting principles and shall be accompanied by the appropriate footnotes.

(c) *Statement of income (Exhibit B).* (1) A statement of income shall be prepared showing operating results of the Total Company, Other Operations and the Trade.

(2) *Operating revenue (Schedule B-I).* (i) Revenue allocated to the Trade shall only be revenue earned from the common carriage of cargo in the domestic offshore trade during the period and other revenue as shown on Schedule B-1, except that minor amounts of other cargo may be considered Trade cargo in accordance with § 553.2(c). Revenue figures shall be reported in total for the Trade and separately for each of the 15 outbound and inbound commodities (listed by tariff descriptions) producing the highest revenues for that portion of the voyage. Where fewer than 15 commodities account for at least 90 percent of the total revenue for either the inbound or outbound portion of the voyage, only those commodities need be separately reported. Where the same commodity is carried under several tariff designations having different rates (e.g., potatoes refrigerated, potatoes nonrefrigerated, potatoes in

bags, potatoes in containers), each of these tariff designations shall be considered as an individual commodity.

(ii) Where the applicable tariff establishes a single freight-all-kinds (FAK) rate for containers that may hold more than one commodity, individual commodity designations shall be disregarded in considering that tariff items for purposes of paragraph (c)(2)(i) of this section.

(3) *Ocean transportation expenses (Schedule B-II).* This schedule shall set forth the number of containers, cubic feet of cargo shipped and amounts paid or owed to each underlying ocean carrier for ocean transportation purchased for the carriage of cargo in Total, for Other Operations and for the Trade.

(4) *Line-haul transportation expenses (Schedule B-III).* This schedule shall set forth the number of cubic feet of cargo carried and amounts paid or owed to motor carriers, railroads or other land carriers for the line-haul transportation of cargo in Total, for Other Operations and for the Trade.

(5) *Pickup and delivery expenses (Schedule B-IV).* This schedule shall set forth expenses incurred in the pickup and delivery of cargo in Total, for Other Operations and for the Trade. Assignments to the Trade shall be direct where possible; otherwise, on the cargo cube relationship by location. This schedule shall also set forth the basis under which pickup and delivery charges are assessed for the Trade (e.g., included in base rate or separate charge) and the amount of any charges paid to a related company for pickup and delivery services.

(6) *Terminal expenses (Schedule B-V).* This schedule shall set forth in detail all expenses incurred in terminal operations for the loading and unloading of containers, the switching and transfer of cargo within the terminal area and any local trucking operations not included in line-haul or pickup and delivery expenses (e.g., between underlying carrier's terminal and the NVO's terminal) in Total, for Other Operations and for the Trade. Assignments to the Trade shall be direct where possible; otherwise, on the cargo cube relationship by location.

(7) *Administrative and general expenses (Schedule B-VI).* This schedule shall set forth all aministrative and general expenses, including advertising and miscellaneous taxes. Depreciation of equipment and amortization of leasehold improvements not assignable to pickup and delivery or terminal expenses shall be included in this schedule. Expenses not directly assigned to the Trade or Other Operations shall be allocated to the Trade on the operating expense relationship. Charitable contributions shall not be allocated to the Trade.

(8) *Other income or expense (Schedule B-VII).* Any other elements of income or expense shall be fully explained and supported by B-VII *Other Income or Expense.* Assignments to the Trade shall be direct where possible; otherwise, on the operating expense relationship. Should this type of assignment appear to be inequitable to either the Trade of Other Operations, a more equitable method shall be employed and the reasons fully explained.

(9) *Provisions for income taxes.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate.

(10) *Extraordinary items.* Income or losses of an extraordinary nature shall be set forth and described in an appropriate schedule which is reconcilable to the statement of income. Classification as an extraordinary item shall be in accordance with generally accepted accounting principles. In general, these amounts shall not be assigned or allocated to the Trade.

(11) *Related company transactions (Schedule B-VIII).* The net income (loss) after Federal income taxes from transactions in the Service with related companies shall be allocated to the Trade. Such allocations shall be made on the same basis as the specific expense was allocated to the Trade. Income taxes should be assigned to related company transactions based on the statutory tax rate. The methods

employed shall be fully explained in Schedule B-VIII, *Related Company Transactions.*

(d) *Operating ratio.* (1) The operating ratio will be computed by *dividing* total Trade expenses (adjusted for related company transactions) *by* total Trade revenue.

(2) The reasonableness of an NVO's operating ratio will be determined by comparing it to the operating ratios of other regulated and non-regulated companies, adjusted for relative risk. In conjunction with the operating ratio, the staff may also consider other financial ratios, such as (i) current, (ii) leverage and (iii) turnover. The NVO's stability in earnings as compared to that of other firms will also be considered.

(e) *Supplementary data (Exhibit C).* The supplementary data schedule shall set forth information concerning the identity of and services offered by the NVO. Specific details are set forth in Exhibit C.

[49 FR 38656, Oct. 1, 1984; 49 FR 42935, Oct. 25, 1984]

§ 553.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0031.

[54 FR 34182, Aug. 18, 1989]

PART 555—AUDITS AND AUDITING PROCEDURES IN THE DOMESTIC OFFSHORE TRADES

Sec.
555.1 Purpose.
555.2 Access to records.
555.3 Notice of audit.
555.4 Agents and auditors.
555.5 Confidentiality of information.
555.6 Penalty for disclosure.

AUTHORITY: 5 U.S.C. 553; sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a).

SOURCE: 49 FR 38859, Oct. 1, 1984, unless otherwise noted.

NOTE: Audits do not fall within the definition of collection of information requests or requirements under the Paperwork Reduction Act. See § 552.91 of this chapter for OMB clearance numbers for reports required to be filed by common carriers in the domestic offshore trades.

§ 555.1 Purpose.

The purpose of this part is to establish rules governing audits by Federal Maritime Commission auditors of the books and records of carriers engaged in the domestic offshore trades of the United States and who are required to file periodic reports with the Commission pursuant to part 552 of this chapter. Such audits are necessary in order that the Commission may discharge its substantive regulatory responsibilities under the Intercoastal Shipping Act, 1933, and section 18(a) of the Shipping Act, 1916, by verifying the required reports.

§ 555.2 Access to records.

The Commission itself, or through duly accredited special agents or auditors, shall at all times have access to all documents, accounts, records, rates, charges, or correspondence used in the preparation of or pertaining to reports filed with the Commission and all underlying working papers (irrespective of by whom prepared) in support of all exhibits and schedules submitted to the Commission, and the Commission or its accredited special agents or auditors shall be permitted to make copies of such records to the extent they deem necessary.

§ 555.3 Notice of audit.

Notice that inspection of a carrier's books and records is desired for the purpose of audit shall be given by the Commission or its duly accredited special agents or auditors, and such inspection shall be at a place and time convenient to the carrier, but such inspection shall not be unduly delayed after reasonable notice is given to the carrier.

§ 555.4 Agents and auditors.

The terms *special agents* or *auditors* shall include any employee of the Commission's Bureau of Tariffs or any other employee of the Commission specifically designated by the Commission or the Director, Bureau of Tariffs.

§ 555.5 Confidentiality of information.

All information obtained by the Commission or its duly accredited special agents or auditors as a result of an inspection or audit carried out pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as *confidential information* in the files of the Commission; except that any confidential information derived from an inspection or audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

§ 555.6 Penalty for disclosure.

Disclosure of information treated as *confidential* under the provisions of this part will be considered as a violation of part 500 of this chapter, which prohibits the misuse by Commission employees of official information obtained through or in connection with Government employment, which information has not been made available to the general public. A violation of part 500 of this chapter will result in disciplinary action, ranging from warning to removal. The Commission is of the view that disclosure of such confidential information would also be a violation of 18 U.S.C. 1905, and any disclosure prohibited by the provisions of this part will be referred by the Commission to the Department of Justice for such action as the Department deems appropriate.

PART 560—AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

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560.901 Failure to file agreements.
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Subpart J—Paperwork Reduction

560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

SOURCE: 52 FR 43909, Nov. 17, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 560.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, and sections 15, 18a, 21, 22, 35, and 43 of the Shipping Act, 1916 (the Act), 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

§ 560.102 Purpose.

(a) This part implements those provisions of the Act which govern agreements between common carriers by water in interstate commerce or other persons subject to the Act.

(b) This part also establishes procedures for:

(1) Filing agreement approval requests pursuant to section 15 of the Act, including supporting statements;

(2) Filing comments and protests to such agreements and responses; and

(3) The disposition of agreement approval requests.

§ 560.103 Policies.

(a) It is the responsibility of the Commission to disapprove, cancel, or modify, by order, after notice and hearing, any agreement, or modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; to operate to the detriment of the commerce of the United States; to be contrary to the public interest; or to be in violation of the Act, and to approve all other agreements, modifications, or cancellations. This part is intended to establish procedures for the orderly and expeditious review of agreements in accordance with these statutory requirements.

(b) Section 35 of the Act provides that the Commission may exempt classes of agreements from any requirement of the Act or this part where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing and approval requirements of the Act and this part.

(c) In order to discharge the responsibilities of the Act the Commission requires sufficient time to analyze and consider every agreement, modification, and cancellation to determine whether or not it is lawful. Therefore, the Commission is establishing procedures, and form and content requirements for agreements, supporting statements, comments and protests, and responses. Parties to agreements are solely responsible for the timely filing of amendments to extend agreements containing termination dates.

(d) It is the responsibility of the Commission to insure that parties to agreements approved under section 15 of the Act are at all times complying with the requirements of that Act. In order to discharge properly this responsibility, the Commission must be fully apprised of the manner in which operations are being and will be carried out and shall require that meaningful reports on such activities be provided to the Commission.

(e) Section 15 of the Act provides that no conference agreement shall be approved, nor shall continued approval be permitted for any agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal. All conference agreements shall contain reasonable and equal terms and conditions for admission and readmission to conference membership to qualified carriers.

(f) Section 15 of the Act provides that the Commission shall disapprove any agreement after notice and hearing on a finding of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints. All ratemaking groups operating under approved section 15 agreements (except leases, licenses, assignments and other agreements of similar character for the use of marine terminal facilities) shall adopt and maintain such procedures.

(g) Section 15 of the Act provides that no agreement between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, shall be approved, nor shall continued approval be permitted, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action. All such agreements shall contain a provision retaining the right of independent action.

(h) Section 15 of the Act provides that the Commission shall disapprove an agreement on a finding of inadequate policing of the obligations under it. The Commission shall require that ratemaking agreements (except leases, licenses, assignments and other agreements of similar character for the use of marine terminal facilities) contain procedures for policing the terms of the agreement.

§ 560.104 Definitions.

(a) *Agreement* means an agreement, or modification thereof, which is a written document and which reflects an understanding, arrangement, or undertaking, between two or more common carriers by water in interstate commerce or other persons subject to the Act which is required by section 15 of the Act to be filed with the Commission.

(b) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, which provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(c) *Common carrier by water in interstate commerce* means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, of possession of the United States and any other State, Territory, or possession of the United States, or between places in the same Territory, District, or possession.

(d) *Conference agreement* means an agreement which authorizes two or more common carriers by water, each operating as a single entity in the trade covered by the agreement, to discuss and agree upon common rates, charges and conditions of carriage and to enforce adherence, by means of liquidated damages, penalties, fines, suspension, expulsion or other contractual remedies.

(e) *Marine Terminal Facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to, docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, which are used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and common carriers by water in interstate commerce or between two common carriers by water in interstate commerce. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to consignees or at which outbound cargo may be received from shippers for vessel or container loading.

(f) *Modification* means any change, alteration, correction, addition, deletion, or revision of an effective agreement or to any appendix to such an agreement.

(g) *Proponents* means the parties to an agreement for which section 15 approval has been requested pursuant to this part.

(h) *Other person subject to the Act* means any person not included in the term *common carrier by water in interstate commerce*, carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other marine terminal facilities in connection with a common carrier by water in interstate commerce.

(i) *Shippers' requests and complaints* means any communication requesting a change in tariff rates, rules, or regulations; the protesting of, or objecting to, existing tariff rates, rules, or regulations; objecting to rate increases or other tariff changes; and protests against allegedly erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. Routine requests for rate information, sailing schedules, space availability, and the like are not included in the term.

Subpart B—Scope

§ 560.201 Subject agreements.

This part applies to agreements by or among two or more common carriers by water in interstate commerce or other persons subject to the Act, or modifications or cancellations thereof:

(a) Fixing or regulating transportation rates or fares;

(b) Giving or receiving special rates, accommodations, or other special privileges or advantages;

(c) Controlling, regulating, preventing, or destroying competition;

(d) Pooling or apportioning earnings, losses, or traffic;

(e) Allotting ports or restricting or otherwise regulating the number and character of sailings between ports;

(f) Limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or

(g) In any manner providing for an exclusive, preferential, or cooperative working arrangement.

Subpart C—Exemptions

§ 560.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing or approval or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 35 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) *Federal Register notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon Commission's own motion, shall be published in the FEDERAL REGISTER. The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, DC; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 35 of the Act shall be retained by the parties and shall be made available upon request by the

Bureau of Trade Monitoring or Bureau of Domestic Regulation for inspection during the term of the agreement and for a period of three years after its termination.

§ 560.302 Non-substantive agreements—exemption.

(a) *Non-substantive agreement* means an agreement between common carriers by water in interstate commerce or other persons subject to the Act, acting individually or through approved agreements, which:

(1) Reflects changes in the:

(i) Name of any geographic locality stated therein;

(ii) Name of the agreement or the name or address of a party to the agreement;

(iii) Name and/or number of any other section 15 agreement, or designated provisions thereof referred to in the agreement;

(iv) Table of contents of an agreement;

(v) Date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or

(vi) Numbers or letters of articles or subarticles of agreements and references thereto in the text;

(2) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee;

(3) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment, supplies, and personnel, including employees and contractors, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals; or

(4) Cancels an agreement approved under the Act and this part.

(b) Non-substantive agreements are exempt from the filing and approval requirements of section 15 and of this part; provided, however, a non-substantive agreement which modifies or cancels an agreement which is subject to the filing and approval requirements of this part shall be filed with the Commission for informational purposes within 30 days of its effective date.

§ 560.303 Husbanding agreements—exemption.

(a) *Husbanding agreement* means an agreement between a common carrier by water in interstate commerce and another person subject to the Act through which a carrier contracts with an agent to handle routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operators; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include agreements which provide for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, *nor* does it include agreements that prohibit the agent from entering into similar agreements with other carriers.

(b) Husbanding agreements are exempt from the filing and approval requirements of section 15 and of this part.

§ 560.304 Agency agreements—exemption.

(a) *Agency agreement* means an agreement between persons subject to the Act which provides for the agent's solicitation and booking of cargoes, and signing contracts of affreightment and bills of lading, on behalf of a common carrier by water in interstate commerce. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) Agency agreements except those:

(1) Where a common carrier by water in interstate commerce is to be an agent for a competing common carrier by water in the same trade, or

(2) Which permit an agent to enter into similar agreements with more than one such carrier in a trade,

are exempt from the filing and approval requirements of section 15 and of this part.

§ 560.305 Equipment interchange agreements—exemption.

(a) *Equipment interchange agreement* means an agreement between two or more common carriers by water in interstate commerce for the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment, which provides only for the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment, and no other subject.

(b) Equipment interchange agreements are exempt from the filing and approval requirements of section 15 and of this part.

§ 560.306 Non-exclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement means an agreement by which one common carrier by water in interstate commerce serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing and approval requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment, and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

> The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating, connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain a declaration of the nonexclusive character of the arrangement and the entire arrangement between the parties, including, when applicable, the following terms and conditions:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision of their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost-effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

§ 560.307 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers in interstate commerce that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers in interstate commerce for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the domestic commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers in interstate commerce solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conferences and/or marine terminal discussion agreements.

(e) All marine terminal agreements as defined in § 560.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, as defined in § 560.307(b), (c) and (d) are exempt from the approval requirements of section 15 of the Shipping Act, 1916 on the condition that they be filed with the Commission. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) A letter of transmittal, which shall:

(i) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

(ii) Identify all of the documents being transmitted including, in the instance of a modification to an approved or exempted agreement, the full name of the approved or exempted agreement, the Commission-assigned agreement number of the approved or exempted agreement and the revision, page and/or appendix number of the modification being filed;

(iii) Provide a concise summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(iv) Clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the filing party; and

(v) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(3) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the approval requirements of the Shipping Act, 1916, effective on the date they are filed with the Commission.

Subpart D—Filing and Form of Agreements

§ 560.401 Filing of agreements.

(a) Agreement approval requests shall be submitted to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001. Such requests shall consist of a true copy and 15 additional copies of the agreement and all supporting information. Requests shall also be accompanied by a letter of transmittal which summarizes the agreement's contents and expressly requests Commission approval pursuant to section 15. The true copy shall be signed by each of the proponents personally or by an authorized representative and shall show immediately below each signature the name, position, and authority of the signer. Requests for approval which do not meet the requirements of this section shall be rejected within 30 days of receipt.

(b) Assessment agreements shall be filed and shall be approved upon filing.

§ 560.402 Form of agreements.

(a) A request for approval of an agreement modification shall be filed in accordance with § 560.401 and shall identify the page and paragraph to be amended and restate each such paragraph. The language to be excised shall be struck through, but not obliterated, and the substituted language, if any, shall be inserted directly following that which is to be excised. The new language shall be underscored. If the modification does not completely replace approved provisions, the page or pages on which the proposed amendments will appear shall be restated with the proposed amendments underscored and placed in proper sequence on the page.

(b) Whenever an approved agreement has been modified three times in the manner described in paragraph (a) of this section, the next succeeding modification shall be accomplished by restating the entire agreement, incorporating all previous modifications, and showing the latest change in the manner required by paragraph (a) of this section.

§ 560.403 Supporting statements.

An agreement submitted for approval may be accompanied by a supporting statement, signed by an authorized representative of the proponents, indicating the reasons which caused the making of the agreement and the results intended to flow from its implementation, or other facts or arguments which support approval. Affidavits or other evidence may be attached to such statements. Supporting statements, including all documents, affidavits or other evidence attached thereto, are public records. No claims of confidentiality will be allowed.

§ 560.404 Time for filing agreements.

(a) All modifications of approved agreements shall be filed within the following specified times:

(1) Applications for extension of an approved agreement due to terminate by its own terms, shall be filed so that the Commission will receive the application not less than one hundred twenty (120) days prior to the date on

which the approved agreement would otherwise terminate.

(2) Modifications of an approved agreement, other than as designated in paragraph (a)(1) of this section, should be filed not less than one hundred twenty (120) days prior to the date it is intended that action will begin, change or cease as a result of the provision(s) of the modification.

(b) Failure to file an application for the extension of an approved agreement due to terminate by its own terms at least one hundred twenty (120) days in advance of the termination date may result in the approved agreement terminating prior to Commission action on the filed amendment.

(c) Notice of cancellation of an approved agreement should be filed not less than sixty (60) days prior to the effective date of cancellation.

Subpart E—Content of Agreements

§ 560.501 Provisions of conference agreements.

(a) *Voting.* Conference agreements, agreements between or among conferences, and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) submitted to the Commission for approval shall contain a provision stating the manner in which the joint business of the parties may be carried out: i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements and the types of vote necessary to take various actions; i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc.

(b) *Membership.* Conference agreements shall include a provision substantially as follows:

> Any common carrier by water in interstate commerce which has been regularly engaged as a common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain such a common carrier service between ports within the scope of this agreement, and who evidences an ability and intention in good faith to abide by all the terms and conditions of this agreement, may hereafter become a party to this agreement by affixing its signature thereto.

This section will not preclude the conference from imposing legitimate conditions on membership, including but not necessarily limited to, the payment of an admission fee, payment of any outstanding financial obligations arising from prior membership, or the posting of a security bond or deposit. All such conditions must be made expressed terms of the conference agreement, filed with and approved by the Commission pursuant to section 15 of the Act.

(c) Every application for membership shall be acted upon promptly.

(d) Any party may withdraw from the conference without penalty by giving at least 30 days' written notice of intention to withdraw to the conference, except that action taken by the conference to compel the payment of outstanding financial obligations by the resigning member shall not be construed as a penalty for withdrawal.

(e) No party may be expelled against its will from the conference except for failure to maintain a common carrier service between the ports within the scope of the agreement (said failure to be determined according to the minimum sailing requirements set forth in the agreement) or for failure to abide by all the terms and conditions of the agreement.

§ 560.502 Provisions of agreements of conferences and others.

(a) All agreements between common carriers by water not members of the same conference or conferences of such carriers serving trades that would otherwise be naturally competitive, shall contain provisions substantially as follows:

> The parties hereto (either carriers or conferences as the case may be) agree that with respect to any actions to be taken or procedures to be followed under this agreement, any party, after (insert here a period of time not to exceed ten days) may take

action or follow procedures independent of those agreed upon.

(b) The parties may stipulate in the agreement whatever event should commence the running of the notice period, and the mode of communicating the decision to take independent action.

Subpart F—Action on Agreements

§ 560.601 Federal Register notice.

Requests for approval which are not rejected pursuant to § 560.401 shall be noticed in the FEDERAL REGISTER. The notice shall include:

(a) A short title for the agreement;

(b) The identity of the proponents;

(c) The Commission agreement number;

(d) A concise summary of the agreement's contents;

(e) A statement that the agreement and any supporting statement, including all documents, affidavits, or other evidence attached thereto, are available for inspection at the Commission's offices;

(f) The final date for filing protests or comments regarding the agreement; and

(g) The name and address of the filing agent.

§ 560.602 Comments and protests.

(a) A comment is a written statement regarding the approvability of an agreement. Comments have no prescribed form or content and are not limited in any way, except by the time limits provided in the FEDERAL REGISTER notice. A written communication regarding the approvability of an agreement, not conforming to the requirements of paragraph (b) of this section, shall be considered a comment. Filing a comment shall not necessarily entitle a person to:

(1) Any discussion of the comment in a Commission order disposing of the agreement;

(2) The institution of any further Commission proceeding; or

(3) Participation in any further proceeding which may be instituted.

(b) A protest is a written opposition to the approval of an agreement which complies with the requirements of this paragraph. A protest also constitutes an undertaking by the protestant to actively participate as a party in any further proceeding concerning the agreement, and protestants shall be so named in any Commission hearing order which may be issued. Protests shall:

(1) Identify, with particularity, the reasons why the agreement, or any constituent part, should be disapproved;

(2) Address the accuracy of any statements and conclusions submitted by the proponents pursuant to § 560.403;

(3) Allege facts which support the arguments made in paragraphs (b)(1) and (b)(2) of this section; and

(4) Specify the source or derivation of the facts alleged pursuant to paragraph (b)(3) of this section.

(c) A copy of all comments and protests filed with the Commission shall be served upon the filing agent identified in § 560.601(g) on the same date they are filed with the Commission. A certificate of service attesting that this requirement has been met shall be attached to the comment or protest.

(d) Within 15 days from the date that comments or protests are due (as specified by the FEDERAL REGISTER notice or as subsequently extended by the Commission), the proponents or their authorized representative may file a response to each such comment or protest with service to all persons which have filed comments or protests.

(e) Except as provided in this section and § 560.403, or except, in the case of an unprotested agreement, as the Director, Bureau of Trade Monitoring or the Director, Bureau of Domestic Regulation may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. Amendments or supplements to documents submitted pursuant to § 560.403 and this section shall be permitted in the discretion of the Commission upon a showing of good cause, except that, in no case shall such permission be granted where the agreement has been scheduled and noticed for an agency meeting pursuant to § 503.82 of this chapter. A change in material fact or in applicable law occurring after the submission of the initial statement, comment or protest will normally constitute good cause. Inquiries as to the status of agreements shall be made to the Secretary of the Commission.

§ 560.603 Disposition of agreement approval requests.

(a) The Commission shall, by conditional or unconditional orders, approve, disapprove, or institute further proceedings regarding agreements filed with it.

(b) Further proceedings regarding an agreement will be instituted when:

(1) The Commission, in its discretion, considers further inquiry advisable;

(2) A protest alleges material facts which, if true and reasonably subject to proof on the basis of their source and derivation, and arguments advanced, would preclude approval of the agreement, except that no further proceeding will be instituted if the disputed factual issues are resolved by the proponents' acceptance of conditions imposed by a conditional order in accordance with paragraph (c) of this section;

(3) The proponents of an agreement which seemingly contravenes the standards of section 15 properly exercise their right to request a further hearing pursuant to paragraph (d) of this section.

(c) The Commission may issue a conditional order prescribing modifications in the agreement necessary to obtain approval when the agreement does or appears to contravene the standards of section 15 unless modified; and if so modified, would be approvable without further proceedings. If conditions imposed by the Commission are met within the time specified by a conditional order, the revised version of the agreement will stand approved from the date of receipt. Notice of such date shall be given to proponents or their representative by the Commission.

(d) Failure to meet conditions imposed by the Commission will result in either the automatic disapproval of the agreement or the institution of further proceedings by the Commission either on its own initiative or, where the conditional order found that the agreement was unapprovable, pursuant to a request from proponents. Any such request shall include a detailed recital of the facts that they intend to prove at that hearing, a description of evidence intended to be used to prove those facts, and an explanation as to why the facts sought to be proven support the approval of the agreement. If a finding of unapprovability was made, the conditional order will expressly state the date upon which disapproval would take place.

(e) It is unlawful to carry out the provisions of a conditionally approved or disapproved agreement prior to approval by the Commission.

Subpart G—Reporting and Record Retention Requirements

§ 560.701 General requirements.

(a) The parties to conference agreements, agreements between or among conferences and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall retain a record of the vote on each question voted on for at least two years. These records may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

(b) All reports or circulars, in whatever form, distributed to the parties, which relate to matters within the scope of the approved agreement, shall be retained by the parties for at least two years. This record may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

§ 560.702 Filing of reports relating to shippers' requests and complaints.

(a) By January 31 of each year, each conference and each other body with rate-fixing authority under an approved agreement (except for leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall file with the Commission a report covering all shippers' requests and complaints received during the preceding calendar year or pending at the beginning of such calendar year. All such reports shall include the following information for each request or complaint:

(1) Date request or complaint was received;

(2) Identity of the person or firm submitting the request or complaint;

(3) Nature of request or complaint, i.e., rate reduction, rate establishment, classification, overcharge, undercharge, measurement, etc.;

(4) If final action was taken, date and nature thereof;

(5) If final action was not taken, an identification of the request or complaint as *pending*;

(6) If denied, the reason.

(b) Tariffs issued by or on behalf of conferences and other rate-making groups shall contain full instructions as to where and by what method shippers may file their requests and complaints, together with a sample of the rate request form, if one is used, or, in lieu thereof a statement as to what supporting information is considered necessary for processing the request or complaint through conference channels. All changes made in such instructions shall be published in said tariffs, supplements thereto, or reissues thereof, in accordance with the tariff filing requirements of section 18(a) of the Act.

§ 560.703 Filing of minutes.

(a) The parties to each approved conference agreement, agreement between or among conferences, or agreements subject to this part whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall, through a designated official, file with the Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter. For the purpose of this part, the term *meeting* shall include any meeting of parties to the agreement, including meetings of their agents, principals, owners, committees or subcommittees of the parties authorized to take final action on behalf of the parties. If the agreement authorizes final action by telephonic or personal polls of the membership, a report describing each matter so considered and the action taken with respect thereto shall be filed with the Commission. These reports need not disclose the identity of parties that propose actions, or the identity of parties that participated in the discussions of any particular matter.

(b) The reports subject to paragraph (a) of this section shall be filed with the Commission within 30 days after such meetings and shall be certified as to accuracy and completeness by the Conference Chairman, Secretary, or other official.

(c) No report need be filed under paragraph (a) of this section with respect to any discussion of or action taken with regard to rates that, if adopted, would be required to be published in a tariff on file with the Commission. This reporting exemption does not apply to discussions involving general rate policy, general rate changes, the opening or closing of rates, or discussions involving items, that, if adopted, would be required to be published in other tariff sections as specified in part 550 of this chapter.

§ 560.704 Filing of reports on admissions, withdrawals, and expulsions.

(a) Prompt notice of admission to membership to a conference shall be furnished to the Commission and no admission shall be effective prior to the postmark date of such notice.

(b) Advice of any denial of admission to membership, together with a statement of the reasons therefor, shall be furnished promptly to the Commission.

(c) Notice of withdrawal of any party shall be furnished promptly to the Commission.

(d) No expulsion shall become effective until a detailed statement setting forth the reason or reasons therefor has been furnished the expelled member and a copy of such notification submited to the Commission.

Subpart H—[Reserved]

Subpart I—Penalties

§ 560.901 Failure to file agreements.

Any common carrier by water in interstate commerce or other person subject to the Act entering into or carrying out an agreement subject to the Act which has not been filed with and approved, or has not been exempted, by the Commission is in violation of section 15 of the Act and this part and subject to penalties of up to $1000 for each day such violation continues.

§ 560.902 Failure to file reports.

Compliance is mandatory and failure to file the reports required by this part may result in disapproval of agreements under section 15 of the Act or penalties of up to $100 for each day of such default under section 21 of the Act.

§ 560.903 Falsification of reports.

Knowing falsification of any report required by the Act or this part is a violation of the rules of this part and is subject to the penalties set forth in section 21 of the Act and may be subject to the criminal penalties provided in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
560.307	3072-0039
560.1—560.306	3072-0040
560.308—560.903	3072-0040

[52 FR 43909, Nov. 17, 1987; 52 FR 45961, Dec. 3, 1987]

SUBCHAPTER D—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN FOREIGN COMMERCE

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 (*1984 Act*) authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988]

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

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Subpart H—[Reserved]

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APPENDIX A—INFORMATION FORM AND INSTRUCTIONS

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

SOURCE: 49 FR 45351, Nov. 15, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 572.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18 of the Shipping Act of 1984 (*the Act*).

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 572.103 Policies.

(a) The Act requires that agreements be processed and reviewed according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed in accordance with a general standard as set forth in section 6(g) of the Act and empowers the Commission to obtain certain information to conduct that review. This part sets forth the kind of information for particular types of agreements which the Commission believes relevant to that review. Only that information which is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) In order to further the goal of expedited processing and review, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commerical relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing or information requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those classes of agreements which require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. These requirements assure that Commission monitoring responsibilities will be fulfilled.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such agreement must: (1) state its purpose; (2) provide reasonable and equal terms and conditions for admission and readmission to membership; (3) allow for withdrawal from membership upon reasonable notice without penalty; (4) require an independent neutral body to police the conference, if requested by a member; (5) prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act; (6) provide for a consultation process; (7) establish procedures for considering shippers' requests and complaints; and (8) provide for independent action. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

§ 572.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that: (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (2) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference agreement* means an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements.

(g) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(h) *Cooperative working agreement* means an agreement which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement.

(i) *Effective agreement* means an agreement approved pursuant to section 15 of the Shipping Act, 1916 or effective pursuant to an exemption under that act, or filed and/or effective under the Act.

(j) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such common carriers associate for the purpose of gaining reciprocal access to cargo which is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(k) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine and investigate alleged breaches or violations by any member of the conference agreement and/or the agreement's properly promulgated tariffs, rules or regulations.

(l) *Information form* means the form containing economic information which must accompany the filing of certain kinds of agreements.

(m) *Interconference agreement* means an agreement between conferences.

(n) *Joint service/consortium agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

(o) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(p) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier by water.

(q) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(r) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(s) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation portion is provided and is a *shipper* in its relationship with an ocean common carrier.

(t) *Ocean common carrier* means a vessel-operating common carrier, but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(u) *Ocean freight forwarder* means a person in the United States that (1) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers, and (2) processes the documentation or performs related activities incident to those shipments.

(v) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(w) *Pooling agreement* means an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(x) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(y) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports.

(z) *Service contract* means a contract between a shipper or shippers' association and an ocean common carrier or conference in which the shipper or shippers' association makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(aa) *Shipper* means an owner or other person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(bb) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(cc) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(dd) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel capacity for the use of another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo.

(ee) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(ff) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement which involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Shipping Act of 1984 and the rules of this part.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984, as amended at 50 FR 6944, Feb. 19, 1985]

Subpart B—Scope

§ 572.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exlcusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;

(6) Control, regulate, or prevent competition in international ocean transportation; and

(7) Regulate or prohibit their use of service contracts.

(b) *Marine terminal operator agreements involving foreign commerce.* This part applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; and

(2) Engage in exclusive, preferential, or cooperative working arrangements.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.202 Non-subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States;

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States;

(f) Any agreement exclusively and solely among non-vessel-operating common carriers;

(g) Any agreement exclusively and solely among ocean freight forwarders.

Subpart C—Exemptions

§ 572.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, Information Form, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 16 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) FEDERAL REGISTER *notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the FEDERAL REGISTER. The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Trade Monitoring for inspection during the term of the agreement and for a period of three years after its termination.

§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) Reflects changes in the name of any geographic locality stated therein; the name of the agreement or the name of a party to the agreement; the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or renumbers or reletters articles or subarticles of agreements and references thereto in the text.

(3) Reflects changes in the titles of persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) A copy of the non-substantive agreement or modification shall be submitted for information purposes in the proper format but is otherwise exempt from the Information Form, notice and waiting period requirements of the Act, and of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Trade Monitoring as to whether a particular modification is non-substantive.

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 6944, Feb. 19, 1985]

§ 572.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between a principal and an agent both of which are subject to the Act and which provides for the agent's handling of routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include an agreement which provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing and Information Form requirements of the Act and of this part.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between a principal and an agent both of which are subject to the Act, which provides for the agent's solicitation and booking of cargoes and signing contracts of affreightment and bills of lading on behalf of an ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement between persons subject to the Act is exempt from the filing and Information Form requirements of the Act and of this part, except those: (1) Where a common carrier is to be the agent for a competing carrier in the same trade; or (2) which permit an agent to enter into similar agreements with more than one carrier in a trade.

§ 572.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for (1) the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and (2) the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing and Information Form requirements of the Act and of this part.

§ 572.306 Non-exclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is an agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not: (1) Prohibit either carrier from entering into similar agreements with other carriers; (2) guarantee any particular volume of traffic or available capacity; or (3) provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A non-exclusive transshipment agreement is exempt from the filing and Information Form requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

§ 572.307 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the foreign commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 572.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements as defined in § 572.307 (b), (c) and (d) are exempt from the waiting period requirements of section 6 of the Shipping Act of 1984 and part 572 of this chapter on the condition that they be filed in the form and manner presently required by part 572 of this chapter.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period requirements effective on the date of their filing with the Commission.

[52 FR 18697, May 19, 1987]

§ 572.308 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the 1984 Act between or among an ocean common carrier or marine terminal operator subject to the 1984 Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing and information form requirements of the 1984 Act and of this part.

(c) Common carriers are exempt from section 10(c) of the 1984 Act to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the requirements of § 572.301(f) of this part.

[53 FR 11073, Apr. 5, 1988]

§ 572.309 Miscellaneous modifications to agreements—exemptions.

(a) Each of the following types of modifications to agreements is exempt from the Information Form, notice and waiting period requirements of the Act and of this part provided that such modifications are filed for informational purposes in the proper format:

(1) Any modification which cancels an effective agreement.

(2) Any modification to the following designated agreement articles:

(i) *Article 3*—Parties to the agreement (limited to conference agreements, and discussion agreements among passenger vessel operating ocean common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements, which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

(ii) *Article 6*—Officials of the agreement and delegations of authority.

(iii) *Article 10*—Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

(b) Any modification exempt under paragraph (a) is effective upon filing.

[50 FR 16703, Apr. 29, 1985. Redesignated at 52 FR 18697, May 19, 1987 and 53 FR 11073, Apr. 5, 1988; 54 FR 53322, Dec. 28, 1989]

Subpart D—Filing and Form of Agreements

§ 572.401 Filing of agreements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) Where required by these regulations, an original and two copies of the completed Information Form referenced at §§ 572.403(a) and 572.405 and appendix A of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b)(1) A filed agreement, to include such supporting documents as are submitted, shall be forwarded to the Commission via a letter of transmittal.

(2) The letter of transmittal shall: (i) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed; (ii) provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification; (iii) clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and, (iv) be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(3) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(c) Any agreement and accompanying Information Form which does not meet the filing requirements of this section shall be rejected in accordance with § 572.601.

(d) Assessment agreements shall be filed and shall become effective upon filing. Assessment agreements need not be accompanied by an Information Form.

(e)(1) Expiration dates to existing agreements or specific provisions thereof, shall remain in effect on and after June 18, 1984.

(2) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

§ 572.402 Form of agreements.

The requirements of this section apply to all agreements except for cancellations, marine terminal agreements, and assessment agreements.

(a) Agreements shall be clearly and legibly typewritten on one side only of 8½ inch by 11 inch durable white loose-leaf paper, providing a margin of not less than three-quarters of an inch on all edges.

(b) The first page of every agreement or appendix shall be the Title Page and shall include:

(1) The name in which the agreement holds out service, or, in the absence of such a holding out, the full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) The generic classification of the agreement in conformity with the definitions in § 572.104;

(4) The date on which the entire agreement was last republished in accordance with § 572.403(g); and

(5) If applicable, the currently effective expiration date of the agreement and/or any specific provision thereof.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement Title Page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page.

(d) Each agreement, appendix and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each such signature, the typewritten full name of the signing party and his or her position, including organizational affiliation.

(e) The body of the agreement shall contain:

(1) Immediately following the Title Page, a Table of Contents providing for the location of all agreement provisions.

(2) Following the Table of Contents, the body of the agreement setting forth the operative provisions of the agreement in the order prescribed by §§ 572.501 and 572.502. Any additional material/provisions shall be set forth as consecutively numbered articles.

(f) Any nonsubstantive provisions, as defined in § 572.302, may be separated from the main body of the agreement text by the inclusion of an appendix to the agreement. Additional provisions which are permitted to be included in an appendix are referred to in §§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1). Such appendices must comply with the format requirements of paragraphs (a) and (c) of this section. Such appendices are to be serialized alphabetically with the first such appendix being designated on its first page as *appendix A*.

(g) All pages subsequent to the Title Page shall be numbered in the upper right-hand corner. At the option of the parties, the numbering of the pages may start with the first page following the Title Page as Page No. 1 and continue consecutively thereafter; or, in the alternative, the pages containing the Table of Contents may be discretely numbered using consecutive Roman numerals with all pages subsequent to the Table of Contents being consecutively numbered beginning with Page No. 1. In either event, the first edition of any one page shall be designated in the upper right-hand corner as *Original Page No.* ——.

(h) All agreements shall conform to the format requirements of this section and § 572.403 and the organization and content requirements of §§ 572.501 and 572.502 according to the following schedule.

(1) Any new agreement shall conform when initially filed.

(2) Any restatement of a previously effective agreement filed subsequent to December 15, 1984, shall conform to the requirements.

(3) Any effective agreement which is modified subsequent to December 15, 1984, shall be restated in its entirety, including the modification, and shall conform to the requirements.

(4) Any other agreement not otherwise brought into conformity with these requirements shall be conformed and filed no later than October 1, 1985.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 572.403 Modification of agreements.

The requirements of this section apply to all agreements except for marine terminal agreements and assessment agreements.

(a)(1) Agreement modifications shall be: filed in accordance with the provisions of § 572.401; in the format specified in § 572.402 and this section; and accompanied by an Information Form.

(2) The Information Form shall be completed as it pertains to significant modifications of the agreement.

(3) Significant modifications, for the purposes of this section, are those that may result in a significant reduction in competition. Such modifications include but are not limited to: significant changes in the geographic scope of conference or pooling agreements which expand the scope to cover additional foreign countries or U.S. port ranges, including initial conference intermodal authority, or the extension of the scope of a joint service agreement to ports outside the scope of the existing joint service agreement currently served by two or more of the parties; additions to the number of parties in pooling or joint service agreements; significant reductions in service levels; significant changes in pool penalty provisions or carrying charges; and changes in cargo categories or descriptions that result in a significant increase in the amount of

cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published. Such modified pages shall be designated as *revised pages* and shall publish in the upper right-hand corner of the new page the consecutive denomination of the revision, e.g., *1st Revised Page 5.*

(c) If a modification exceeds the page being modified and the parties do not wish to modify the entire agreement, the additional material may be published on an original page, designated with the same number as the page being modified and with an alphabetical suffix, i.e. *Original Page 5a.*

(d) The language being modified shall be indicated on the page filed as follows:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(3) As an alternative to publishing such indications of change on the filed page, the filed page may be submitted devoid of such indications if the filing is accompanied by a page, submitted for information/illustration only, setting forth the proposed modifications in accordance with the format prescribed in paragraphs (d) (1) and (2) of this section.

(e) When a revised or new page is revised, or the entire agreement is reissued, the change indications in paragraphs (d)(1) and (d)(2) of this section are to be deleted from the republished pages.

(f) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(g)(1) In the instance of an agreement which publishes the indications of modifications, specified in paragraph (d) of this section on the filed agreement page itself, then, not later than two years after the last modification to the agreement, the entire agreement shall be republished incorporating such modifications as have been made and shall supersede the previous edition of the agreement.

(2) Such republished agreement will be filed with the Commission in accordance with the filing (except as provided in paragraph (g)(3) of this section), format and content requirements of this part and shall contain nothing other than the previously effective language and such nonsubstantive modifications as are necessary to accomplish the republication.

(3) It is not required that the filing of a republished agreement as described in paragraph (g)(2) of this section, be accompanied by the Information Form or that it be filed in more than an executed original true copy.

§ 572.404 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the form, organization and content requirements of §§ 572.401, 572.402, 572.403, 572.501 and 572.502.

(b) Requests for permission to depart from the form requirements of this subpart shall be submitted in advance of the filing or submission of the materials to which the requested waiver would apply and shall state: (1) the specific regulations from which relief is sought; (2) the special circumstances requiring the requested relief; and, (3) the beneficial results anticipated to be obtained from the requested waiver.

§ 572.405 Information form.

(a)(1) Except for marine terminal agreements and assessment agreements, the information required by the Commission for review of an agreement shall be provided in the Information Form set forth in appendix A to this part.

(2) The filing party to an agreement subject to the Act shall complete and submit an original and two copies of the Information Form at the time that an agreement is filed. The Information Form shall be completed in accordance with this subpart, including the Instructions set forth in appendix

A. Copies of the Form may be obtained in person at the Office of the Secretary or by writing to the Secretary of the Commission.

(b) A complete response in accordance with the Instructions to the Information Form shall be supplied to each item on the Information Form that is required to be answered. Whenever the party answering a required part of the Information Form (other than parts III and IV) is unable to supply a complete response, that party shall provide, for each item for which less than a complete response has been supplied, either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. Use of estimated data with parts III and IV requires no explanation of why precise data are not available.

(c) Any party filing the Information Form may supplement that Form with any other information or documentary material.

(d) The Information Form and any additional information submitted by a filing party under this section shall not be disclosed except as provided in § 572.608.

§ 572.406 Complete and definite agreements.

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

Subpart E—Content and Organization of Agreements

§ 572.501 Agreement provisions—organization.

(a) All agreements, except for cancellations, marine terminal agreements, and assessment agreements, shall be organized and shall include the content as provided by this section. The *article* numbers hereinafter enumerated are reserved for their particular respective provision or authority as indicated in this section and § 572.502 and may not be used for any other subject or purpose nor may the specified subject matter appear elsewhere in the agreement except as herein provided. In the instance of a legitimately inapplicable provision, the article number and title are to be included in the text followed by the word, "None".

(b) All agreements shall organize and number the following articles in the following order and shall observe the guidelines as to content as provided in this section. Additional articles required to definitively express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the articles enumerated in this subpart (and, where applicable, in § 572.502) and shall be numbered consecutively, commencing with Article 14.

(1) *Article 1—Full name of the agreement.*

(2) *Article 2—Purpose of the agreement.*

(3) *Article 3—Parties to the agreement.* List the current parties to the agreement to include for each participant: (i) the full legal name of the party to include any FMC-assigned agreement number associated with that name; and (ii) the address of its principal office (to the exclusion of the address of any agent or represent-

ative not an employee of the participating carrier or association). In the alternative to publishing the membership of the agreement in Article 3, the membership may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 3.

(4) *Article 4—Geographic scope of the agreement.* State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(5) *Article 5—Overview of agreement authority.* State the authorities, as set forth in § 572.201 of this part, intended to be collectively exercised under the auspices of the agreement. To the extent that the summary provided does not represent the full arrangement between the parties, additional articles or appendices of the parties' own designation and subsequent to these enumerated articles will be required to provide the specification of the authority to be exercised and the mechanics of that exercise. Article 5 is not necessarily definitive of the authority that the parties may collectively exercise pursuant to the agreement and parties may rely on the contents of the entire agreement as authority for their activities.

(6) *Article 6—Officials of the agreement and delegations of authority.* Specify, by organizational title, the administrative and executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, specify: (i) The officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and, (ii) a statement as to any designated U.S. representative of the agreement required by this chapter. Where convenient, the contents of this article may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 6.

(7) *Article 7—Membership, withdrawal, readmission and expulsion.* Specify the terms and conditions for admission, withdrawal, readmission and expulsion to or from membership in the agreement, including membership fees, refundable deposits and other fees or charges associated with membership. Two-party agreements which do not involve any form of rate, charge or tariff determination or publication authority and which do not otherwise have any conditions of agreement participation other than the commitment of the physical resources of the respective parties are relieved of the requirements of this subparagraph. In such a case, the article number and name shall be designated as provided in paragraphs (a) and (b)(1) of this section.

(8) *Article 8—Voting.* Specify the procedures, including quorum requirements, by which the agreement membership exercises its collective authority to choose, endorse, decide the disposition of, defeat, or authorize any particular matter, issue or activity.

(9) *Article 9—Duration and termination of the agreement.* Specify, where applicable, the date on which the agreement terminates and describe the procedures to be followed to terminate the agreement.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 572.502 Organization of conference and interconference agreements.

(a) Each conference agreement in addition to Articles 1 through 9 contained in § 572.501, and such other matters as may be necessary to express the full understanding of the parties, shall include the following articles organized and including the content as provided in this section:

(1) *Article 10—Neutral body policing.* State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. Include a description of any such neutral body authority and procedures related thereto. In the alternative to publishing the neutral body and procedures description in Article 10, the descrip-

tion may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 10.

(2) *Article 11—Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Article 12—Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) *Article 13—Independent action.* (i) Each conference agreement shall specify the independent action procedures of the conference which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(ii) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 580.10(a)(2).

(iii) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(iv) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(v) A conference agreement shall specify that any new rate or service item proposed by a member under independent action shall be included by the conference in its tariff for use by that member effective no later than 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(vi) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than 90 days from the effective date of this section.

(vii) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601 of this part.

(viii) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.502(a)(4) may be made to the particular ratemaking section.

(5) *Article 14—Service contracts.* (i) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(ii) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(iii) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

(b)(1) Each interconference agreement, in addition to Articles 1 through 9 contained in § 572.501, and Articles

10, 11, and 12 contained in paragraph (a) of this section, shall include the following article: *Article 13—Independent Action* which specifies the independent action procedures of the agreement.

(2) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(3) Each agreement between conferences must provide the right of independent action for each conference.

[49 FR 45351, Nov. 15, 1984, as amended at 51 FR 16038, Apr. 30, 1986; 53 FR 7528, Mar. 9, 1988]

Subpart F—Action on Agreements

§ 572.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and whether the Information Form is complete or where not complete, the deficiency is adequately explained.

(b)(1) The Commission shall reject any agreement that fails to comply with the filing and information requirements under the Act and of this part. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement. The entire filing, including the agreement, the Information Form and any other information or documents submitted, shall be returned to the filing party.

(2) Should the agreement be refiled, the full waiting period must be observed.

§ 572.602 "Federal Register" notice.

(a) A notice of any filed agreement which is not rejected pursuant to § 572.601 will be transmitted to the FEDERAL REGISTER within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 572.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and fifteen (15) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to: (1) reply to the comment by the Commission; (2) the institution of any Commission or court proceeding; (3) discussion of the comment in any Commission or court proceeding concerning the filed agreement; or (4) participation in any proceeding which may be instituted.

§ 572.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the FEDERAL REGISTER.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. The waiting period resumes on the date of receipt of the additional material or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order.

§ 572.605 Requests for expedited approval.

(a) Upon written request of the filing party, the Commission may shorten the review period. Accompanying the request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. If the Commission decides to approve an abbreviated waiting period, the term will be decided after consideration of the parties' needs and the Commission's ability to perform its review functions under a reduced time schedule. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the FEDERAL REGISTER. When a request for expedited approval is denied by the Commission, the normal waiting period specified in § 572.604 will apply. Such expedition will not be granted routinely and will be granted only in exceptional circumstances which include but are not limited to: the impending expiration of the agreement; operational urgency; Federal or State imposed time limitations; or other reasons which, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited approval will be considered for an agreement whose waiting period has resumed after having been suspended by a request for additional information.

[49 FR 45351, Nov. 15, 1984, as amended at 50 FR 16704, Apr. 29, 1985]

§ 572.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documentary material necessary to complete the statutory review required by section 6 of the Act. The request shall be made prior to the expiration of the waiting period. All additional information and documentary material shall be submitted to the Director, Bureau of Trade Monitoring, Federal Maritime Commission, Washington, DC 20573. If the request is not fully complied with, a statement of reasons for noncompliance shall be provided for each item or portion of such request which is not fully answered.

(b) Where the Commission has made a request for additional information material, the agreement's effective date is 45 days after receipt of the additional material. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the communication.

(d) The party upon whom a request for additional information is made will have a reasonable time to respond, as specified by the Commission. The test of reasonableness shall be based on the particular circumstances of the request and shall be determined on a case-by-case basis.

(e) Notice that a request for additional information has been made will be published by the Commission and served on commenting parties. Such notice will indicate only that a request has been made and will not specify what information is being sought. Within fifteen (15) days following service of the notice, further comments on the agreement may be filed.

§ 572.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for additional information. The Commission may request that the court:

(1) Order compliance with the request; and

(2) At its discretion, grant other equitable relief which under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 572.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information which is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is in response to a request from either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

§ 572.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

Subpart G—Reporting and Record Retention Requirements

§ 572.701 General requirements.

(a) *Address.* All reports required by this subpart should be addressed to the Commission as follows:

Director, Bureau of Trade Monitoring, Federal Maritime Commission, Washington, DC 20573

The lower, left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: *Minutes, Agreement 5000.*

(b) *Serial numbers of reports.* (1) Each report filed with the Commission should be assigned a number for each subject. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign *Meeting No. 1* to its minutes, the next meeting will be assigned *Meeting No. 2,* and so on. The first Shippers' Request and Complaint report should be designated *Shippers' Request and Complaint Report No. 1,* the next report would be *Shippers' Request and Complaint Report No. 2,* and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its reports in a manner which differs from that set forth in paragraph (b)(1) of this section may continue to utilize its own system in lieu thereof.

(c) *Retention of records.* Each agreement required to file an index of documents pursuant to this subpart shall retain a copy of each document listed for a minimum period of 3 years after the date the document is distributed to the members and shall make it available to the Commission upon written request.

(d) *Request for documents.* Documents may be requested by the Director, Bureau of Trade Monitoring, in writing by reference to a specific minute or index, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

(e) *Time for filing.* Documents filed on an annual (calendar) year basis shall be filed by February 15 of the following year. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(f) *Confidentiality.* All information submitted to the Commission under this subpart shall be accorded confidential treatment to the fullest extent permitted by law.

§ 572.702 Filing of reports related to shippers' requests and complaints and consultations.

(a) *Shippers' requests and complaints.* (1) Each conference shall file with the Commission an annual report setting forth under established shippers' request and complaint procedures and for each calendar year, a statistical summary separately showing: (i) The total number of shippers' and shippers' associations' requests and complaints received; (ii) the total number which were fully granted; (iii) the total number which were partially granted; and (iv) the total number which were denied.

(2) Each report shall also show the total number of requests or complaints which were pending disposition at the start and at the end of the report period.

(3) Each of the totals which are reported to the Commission shall be divided into three categories: (i) those involving rates or charges; (ii) those involving transportation services; and (iii) those involving other matters.

(b) *Consultations.* Each conference shall file with the Commission an annual report setting forth a statistical summary showing separately the total number of shipper and shippers' association requests for consultations and the total number of consultations during each calendar year under the established consultation procedures. Each of the totals which are reported to the Commission shall be divided into two categories: (1) consultations involving commercial disputes; and (2) consultations involving cooperation with shippers in preventing and eliminating malpractices.

§ 572.703 Filing of minutes.

(a) *Meetings.* For purposes of this subpart, the term *meeting* shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal polls of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, marine terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the Commodity Rate Section, Class Rate Section, or Open Rate Section of the pertinent tariff on file with the Commission except that this exemption does not apply to discussions limited to gen-

eral rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 572.704 Index of documents.

(a) Each agreement required to file minutes pursuant to § 572.703 shall maintain an index of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(1) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(2) Studies regarding proposed changes to the conference agreement or its membership.

(3) Non-conference competition.

(4) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(5) Trade tonnaging requirements, vessel utilization and vessel replacement plans.

(6) Conference participation in trade (market share).

(7) The exercise of the right of independent action.

(8) Development of transportation technology and intermodal services.

(9) Malpractices.

(10) Use of service contracts, time volume rate schemes and loyalty contracts.

(11) Conference relationship with shippers and shipper groups.

(12) Governmental and other foreign requirements affecting the conference.

(b)(1) Each index required to be maintained by paragraph (a) of this section shall be filed with the Commission on a calendar-year quarterly basis.

(2) Each index must be certified by an official of the agreement as true and correct.

§ 572.705 Waiver of reporting and record retention.

Upon a showing of good cause, the Commission may waive any of the provisions of this subpart.

Subpart H—[Reserved]

Subpart I—Penalties

§ 572.901 Failure to file.

Any person operating under an agreement involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, which has not been filed and has not become effective pursuant to the Act and this part is in violation of the Act and of this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 572.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in the Information Form, is a violation of the rules of this part and is subject to the civil penalites set forth in section 13(a) of the Act and may be subject to the criminal penalites provided for in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 572.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
572.101 through 572.902	3072-0045

APPENDIX A—INFORMATION FORM AND INSTRUCTIONS

Explanation and Instructions for Information Form

The following explanation and instructions accompany the Information Form (Form) and are intended to facilitate the completion of the Form. The explanations and instructions should be read in conjunction with the Shipping Act of 1984 (Act) and with 46 CFR part 572.

All agreements by or among ocean common carriers referenced in 46 CFR 572.201(a) (excluding assessment agreements, marine terminal agreements and those agreements exempted from the filing of the Information Form pursuant to subpart C of part 572) and significant modifications to agreements referenced in § 572.403 filed with the Commission must be accompanied by a completed Information Form, which in all cases necessitates the completion of parts I, II, VI, and IX.

Part V, which requests information on proposed service and any proposed reduction or elimination of service, is required to be completed only by parties filing agreements with service authority.

Completion of part VII is optional.

Because of their potential substantial anticompetitive implications, parties filing certain types of agreements, namely ratefixing (including, for example, agreements authorizing conferences, interconference agreements, and agreements between a conference and one or more ocean common carriers), pooling, and joint-service and consortium agreements are required to complete parts III, IV and VIII of the Form in addition to the above specified parts required to be completed by all filing parties.

Certain parts of the Form request information that may not be readily available to the filing party. Where precise information is not available, best estimates may be supplied. Where estimates are made, they should be identified by the use of the notation *est.* Except for parts III and IV, furnishing an estimate requires a clear explanation of why the precise information is not available. Where such an explanation is provided, the use of estimates will not ordinarily be regarded as a failure to supply a complete response as specified in 46 CFR 572.601, and does not require a separate statement of reasons for noncompliance.

In all parts of the Form where data are requested, the filing party is required to indicate all sources used to obtain such data. Sources should also be specified where estimates have been made by the filing party.

PART BY PART EXPLANATION

Part I

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.501.

Part II(A)

Part II(A) requires the filing party to indicate whether or not the agreement authorizes the parties to collectively fix rates or significantly modifies an agreement with such authority. Rate-fixing may be authorized by a conference agreement, an interconference agreement, or an agreement between a conference and one or more ocean common carriers.

Part II(B)

Part II(B) requires the filing party to indicate whether or not the agreement authorizes the parties to pool cargoes or revenues, or significantly modifies an agreement with such authority.

Part II(C)

Part II(C) requires the filing party to indicate whether or not the agreement authorizes the parties to establish a new joint-service or consortium, or significantly modifies an agreement with such authority.

BACKGROUND INFORMATION TO PARTS III AND IV

If any question in part II is answered "YES", the filing party is required to complete parts III, IV and VIII (in addition to completing parts I, II, VI and IX, which are required to be completed by all filing parties).

The *amount of cargo* is to be measured in appropriate units as determined by the parties (such as revenue tons, weight tons, measurement tons or TEUs). Specify the unit of measurement used.

The relevant trade(s) for the purpose of parts III and IV is to be determined by the parties. The relevant trade(s) may encompass the entire geographic scope of the agreement, or any combination of U.S. and foreign ports or port ranges or sub-trades within the scope of the agreement as deemed appropriate by the parties. The filing party should clearly identify the relevant trade(s) used for the purposes of completing the Information Form.

Sub-trade is defined as the scope of all liner movements between *each* foreign country and *each* U.S. port range within the scope of the agreement. Each foreign country/U.S. port range pair should be shown separately. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound liner movements should be shown separately.

U.S. port ranges are defined by using the Bureau of Census classification of U.S. Coastal Districts. Thus, the U.S. port ranges are defined as follows:

North Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to the southern boundary of Virginia.

South Atlantic—Includes ports along the eastern seaboard from the northern boundary of North Carolina to, but not including Key West, Florida. Also included are all ports in Puerto Rico and the U.S. Virgin Islands.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida to Brownsville, Texas, inclusive.

South Pacific—Includes all ports in the States of California and Hawaii.

North Pacific—Includes all ports in the States of Oregon, Washington, and Alaska.

Great Lakes—Includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Liner service refers to a definite, advertised schedule, giving relatively frequent sailings at regular intervals between specific U.S. ports or port ranges and designated foreign ports or port ranges. *Liner vessels* are defined as those vessels used in a liner service. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel operating ocean common carrier engaged in liner service. *Liner movement* is the carriage of liner cargo by liner operators. The above liner terms, definitions and descriptions are only to be used for the purpose of the Information Form.

Market share information should be provided using data for the most recent twelve (12) month period for which data are available. State the period used. Identify all units of measurement and all sources of the data. Data may be estimated. Indicate where estimates are made and describe the basis of their derivation.

Alternative liner routing is defined as liner service between the foreign country specified in the sub-trade and any North American port(s) other than those located within the port range covered by the sub-trade. The alternative liner routing may serve the sub-trade's port(s) and interior point(s) by way of feeder service, transshipment, surface carriage (such as mini-landbridge), or some other form of substituted transport. Alternative liner routing includes only those liner services which compete for cargoes carried in the sub-trade.

Part III(A)

Part III(A) requires the filing party to provide the total amount of cargo carried on *all parties'* liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part III(B)

Part III(B) requires the filing party to provide the total amount of cargo carried on *all* liner vessels (i.e., both party and non-party carriers) operating in each trade identified in (A) within the scope of the agreement for the most recent twelve (12) month period for which data are available.

Part III(C)

Part III(C) requires the filing party to provide the combined market share of all parties operating in each relevant trade within the scope of the agreement. The market share provided in part III(C) is the quotient (multiplied by 100) of the total derived in part III(A) divided by the total derived in part III(B). The *formula for calculating market share* is as follows:

The total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve-month period for which data are available divided by the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the same twelve-month period; which quotient is multiplied by 100.

The relevant trade(s) identified in III(A) should be clearly identified. Each market share calculation should be based on cargo data for identical relevant trades. The most recent twelve-month period for which data are available is to be the same period of time used both in the calculation of the parties' total liner cargo movements [Part III(A)] and in the calculation of the total sub-trade liner cargo movements for all liner operators [Part III(B)].

Part IV(A)

Part IV(A)(1) requires the filing party to provide, for each relevant trade within the scope of the agreement, the names of all liner operators who are not parties to the agreement, and who were offering liner service in that trade at the time the agreement was filed with the Commission.

Part IV(A)(2) requires the filing party to provide, for each relevant trade, the names of all liner operators serving alternative liner routings who compete for the cargoes carried by the parties.

Part IV(A)(3) requires the filing party to describe the extent of the competition offered by all non-party liner operators, including liner operators directly serving the relevant trade(s) *and* liner operators serving alternative liner routings. A description of the extent of competition should include estimates (or precise information where available) of non-party liner operator market share (shown either for each individual operator or for all operators collectively). Any evidence of underutilized capacity in the alternative liner routings may also be provided. Explain how the non-party market share was derived. Specify the units of measurement used in the calculations. Indicate the source(s) used to provide data or estimates.

Part IV(B)

Part IV(B)(1) requires the filing party to identify to the extent known all significant non-liner competitive substitutes that are available to shippers of commodities historically transported by liner service within the scope of the agreement. Non-liner competitive substitutes may include carriage on a charter or contract basis or on an infrequent, irregular basis by bulk, mix container/bulk, breakbulk or other vessel-type operators. Such substitutes may also include carriage by air freight operators or air passenger operators with available *belly space* for air freight. Such substitutes may provide service to a trade through some form of substituted service (e.g., minilandbridge, transshipment or feeder service) by way of ports within an alternative North American port range(s).

Part IV(B)(2) requires the filing party to estimate the percentage of the total amount of cargo, historically carried in the trade on liner vessels, that has been carried by non-liner competitive substitutes over the most recent twelve (12) month period for which data are available. The intent of part IV(B)(2) is to determine the amount of liner cargo historically carried in the trade that has been *lost* to non-liner operators. Identify all units of measurement and describe how the percentage was derived. Identify the sources used.

Part V

Part V is required to be completed only by filing parties whose agreements contain service authority, which is defined as including either or both of the following authorities allowing parties to agree between or among themselves: to allocate (or otherwise provide) tonnage or capacity between or among carriers in the relevant trade(s); to establish a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports. For the singular purpose of the Information Form, *port* means the place with a harbor that an ocean carrier serves either directly by oceangoing vessel or indirectly by feeder service. Port calls are direct or indirect calls at a port by vessels under the direct operational control of one or more parties to the agreement.

Part V(A)

Part V(A) requires the filing party to identify all U.S. ports expected to be served under this agreement. Include all U.S. ports expected to receive direct liner service (port calls by a party) and indirect liner service (port calls by way of some form of substituted service such as feeder service) where those vessels are under the direct operational control of one or more of the parties to the agreement. The identification of other forms of indirect service under the agreement, such as intermodal service (e.g., interior point or minilandbridge) or transshipment may be provided if the parties believe that such information will assist and expedite the Commission's analysis of the agreement's impact on service.

Part V(B)

Part V(B)(1) requires the filing party to specify any party's reduction in frequency of service to any U.S. port within the scope of the agreement where the reduction of service to that port occurs as a result of the implementation of the agreement. Reductions in frequency are determined as follows: (1) for each party and for each U.S. port within the scope of the agreement served by that party, determine total number of port calls over the most recent twelve (12) month period for which data are available (historical port call calculation); (2) for each party and for each U.S. port within the scope of the agreement served by that party, estimate the total number of port calls for the twelve (12) month period immediately following implementation of the agreement (expected port call calculation); (3) calculate the difference between the *historical port call calculation* and the *expected port call calculation*. Provide, for each party and for each U.S. port, the following calculations: the *historical port call calculation*; the *expected port call calculation*; and the difference between those calculations.

Part V(B)(2) requires the filing party to specify any elimination of service to any U.S. port within the scope of the agreement that is currently (at the time the agreement is filed) receiving liner service from any party to the agreement, where the elimination of that port occurs as a result of the implementation of the agreement. The term *service to any U.S. port* includes direct service by the parties and indirect service by way of feeder service.

Part VI(A)

Part VI(A) requires the filing party to indicate whether or not the agreement was entered into as a direct or indirect response to any law, decree, rule, regulation or any other governmental action promulgated or otherwise implemented by a foreign government. The agreement may, for example, operate in a context where a foreign government has promulgated or implemented certain cargo reservation, cargo preference or other cargo sharing schemes that favor national flag lines and that require these national lines to be members of a conference. A *direct* response to such governmental action would be the creation of a conference agreement. An *indirect* response to such governmental action would be the creation of a pool that facilitates cargo sharing within a conference even though the pool was not *per se* required by such governmental action. Moreover, a commercial agreement that is in response to a governmental action that was itself in response to the concerted actions of other governments (for example, the UNCTAD Code of Liner Conduct) would be in direct response to a governmental action and so require the completion of part VI. In addition, an equal access agreement necessarily entails the involvement of a foreign government in liner shipping, thus requiring the completion of part VI.

Part VI(B)

Part VI(B) requires the filing party to identify all such laws, decrees, rules, regulations or any other foreign governmental actions that have led to the agreement. All such governmental actions should be identified by the type of governmental action (e.g., a law, decree, memorandum order, etc.), the full legal title of the governmental action, the date that the governmental action became (or will become) effective, and the date (if specified) the governmental action will terminate. Part VI(B) also requires a detailed description of the purpose and the nature of the governmental action, including all requirements imposed on the parties by the governmental action, and the specification of each provision in the agreement that is a direct or indirect response to each such governmental action.

Part VI(C)

Part VI(C) requires the filing party to indicate whether or not any law, decree, rule, regulation or any other foreign governmental action identified in part II(B) limits access to the carriage of liner cargoes within the scope of the agreement. Limited access to the carriage of liner cargoes may be effected by excluding certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality) from the trade entirely, or by reserving certain cargoes for carriage by certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality), or by limiting the ports at which liner operators may call, or by restricting the frequency of scheduled port calls, or by other such measures that restrict the open competition for liner cargoes within the scope of the agreement by liner operators.

Part VI(D)

Part VI(D) requires the filing party to explain how access to cargoes carried by liner operators is limited by the actions of a foreign government as identified in part VI(B). See part VI(C) for examples of how access to cargoes can be limited by the actions of a government.

Part VI(E)

Part VI(E) requires the filing party to provide the percentage of the total amount of cargo carried on all liner vessels in the trade to which access is limited by a foreign government. The percentage is derived by dividing the amount of cargo in the trade to which access is limited by a foreign government, by the total amount of cargo carried on all liner vessels in the trade and multiplying the quotient by 100. The *trade* is defined as the scope of the agreement, that is, all foreign and domestic ports or port ranges served under the agreement. The amount of cargo can be measured in revenue tons, weight tons, measurement tons or TEU's. Specify which unit of measurement is used. The amount of cargo should be provided on the basis of the most recent twelve (12) month period for which data are available. Where precise information is not available, best estimates may be supplied. Identify estimates by the use of the notation est. Indicate the sources of such estimates.

Part VII

The completion of part VII (A) and (B) is optional.

Part VII(A)

Part VII(A) permits the filing party to indicate all benefits resulting from the agreement that will accrue principally to the parties as a result of the operation of the agreement. Such benefits may include increased operational efficiencies or other reductions in costs that result from the implementation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VII(B)

Part VII(B) permits the filing party to indicate all benefits resulting from the agreement that will accrue to shippers and to

U.S. commerce generally. Such benefits may include reduced rate levels or improved quality or frequency of service that result from the operation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VIII

Part VIII requires a filing party that has answered "YES" to part II (A), (B) or (C) to identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX(A)

Part IX(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires generally that the filing party sign and certify that the information in the Form and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

FEDERAL MARITIME COMMISSION

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number ——————————
(Assigned by FMC)

Part I *Agreement Name:*——————————

Part II *Agreement Type*

(A) *Rate-Fixing Agreements*

Does the agreement authorize the parties to collectively fix rates or significantly modify an agreement with such authority?

Yes ☐ No ☐

(B) *Pooling Agreements*

Does the agreement authorize the parties to pool cargoes or revenues or significantly modify an agreement with such authority?

Yes ☐ No ☐

(C) *Joint Service or Consortium Agreements*

Does the agreement authorize a joint service/consortium arrangement or significantly modify an agreement with such authority?

Yes ☐ No ☐

If any question in PART II is answered "YES", complete PARTS III, IV, and VIII (in addition to PARTS I, II, VI, and IX that are required to be completed by all filing parties.)

Part III *Market Share Information*

(A) Provide the total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(B) Provide the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(C) Provide the market share of all parties in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part IV *Market Competition*

(A) *Liner Competition*

(1) For each relevant trade within the scope of the agreement, provide the names of all liner operators *not* parties to the agreement, currently offering service in that trade.

(2) Provide the names of all liner operators serving alternative liner routings where those operators compete for cargoes carried by the parties in the relevant trade.

(3) Describe the nature and extent of the competition from the liner operators listed in (A)(1) and (A)(2) above.

(B) *Non-Liner Competition*

(1) Identify all competitive substitute forms of transport, other than liner service, that are available to shippers of commodities historically transported by liner service in each relevant trade (including, for example, bulk carriers, charter operators, or air freight carriers).

(2) Estimate the percentage of the total amount of liner cargoes in each relevant trade, traditionally carried on liner vessels, that has been carried by non-liner substitute forms of transport over the most recent twelve (12) month period for which data are available.

Part V *Service to the Shipping Public Under the Agreement*

(To be completed only for those agreements which have service authority.)

(A) *Proposed Service*

Identify all U.S. ports expected to be served by the parties under this agreement.

(B) *Reduced Sailings*

(1) Estimate the parties' reductions in frequency of calls at each U.S. port within the scope of the agreement.

(2) Specify the parties' elimination of service to any U.S. port within the scope of the agreement currently served by any party.

Part VI *Foreign Government Involvement in the Liner Market*

(A) Was this agreement entered into as a direct or indirect response to any law, decree, rule, regulation, or other governmental action promulgated or implemented by a foreign government?

Yes ☐ No ☐

(B) If the answer to (A) is "YES", identify all such laws, decrees, rules, regulations or other governmental actions and specify all provisions in the agreement that stem from these factors.

(C) If the answer to (A) is "YES", do any of the above identified governmental actions limit access to the carriage of liner cargoes within the scope of the agreement?

Yes ☐ No ☐

(D) If the answer to (C) is "YES", explain how access to liner cargoes is limited by the foreign government.

(E) If the answer to (C) is "YES", provide the percentage of the total liner cargo in the trade to which access is limited by a foreign government. Explain the method by which the percentage was derived.

Part VII *Benefits of the Agreement* (Optional)

(A) Indicate any benefits (such as improved efficiencies or other reductions in transportation costs) that will accrue principally to the parties as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

(B) Indicate any benefits (such as lower rate levels or improved service levels) that will accrue to shippers and to U.S. commerce generally as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

Part VIII *Reports, Studies or Other Research*

Identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement, or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX *Identification of Person(s) to Contact Regarding the Information Form and Certification of Authenticity*

(A) Identification of Contact Person ————

(1) Name of Contact Person————
(2) Title of Contact Person ————
(3) Firm Name and Business ————
(4) Business Telephone Number ————
(5) Cable Address ————

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).

(1) Name————
(2) Title ————
(3) Address ————
(4) Telephone ————
(5) Cable Address ————

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made, the information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)————
Title ————
Relationship with parties to agreement ————
————
Signature ————
Date ————

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

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EXHIBITS TO PART 580

EXHIBIT No. 1—TITLE PAGE (FRONT) FORMAT
EXHIBIT No. 2—TITLE PAGE (REVERSE) FORMAT
EXHIBIT No. 3—CLASS TARIFF OR CLASS AND COMMODITY TARIFF INDEX
EXHIBIT No. 4—SINGLE LEVEL OF RATES, PACKED/UNPACKED RATES, SPECIAL RATES, EMERGENCY RATES AND VALUATION RATES
EXHIBIT No. 5—CLASS RATE TARIFF OR CLASS RATE SECTION OF CLASS AND COMMODITY TARIFF

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707-1709, 1712, 1714-1716, and 1718.

SOURCE: 49 FR 45379, Nov. 15, 1984, unless otherwise noted.

§ 580.0 Scope.

(a) These regulations govern the publication and filing of tariffs for the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

(b) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates and charges for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984. The tariff format and content requirements of this part also reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984.

(c)(1) Compliance with this part is mandatory and any tariff submitted for filing which fails to meet criteria specified in this part is subject to rejection pursuant to § 580.10(d)(1). Upon rejection it shall be void and its use unlawful.

(2) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful and, pursuant to section 13 of the Shipping Act of 1984, is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committted, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

§ 580.1 Exemptions and exclusions.

(a) This part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste, except that carriers or conferences which voluntarily file tariff provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions.

(b) This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(c) The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(i) Carriage of property is limited to vehicles;

(ii) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(iii) The vessel operator does not move the vehicles on or off the ship; and

(iv) The common carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(2) Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(3) Transportation of mail between the United States and foreign countries.

(4)(i) Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario and Superior, Wisconsin, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(5)(i) Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(6)(i) Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers.

(ii) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada.

(iii) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(7) Transportation of used military household goods and personal effects by non-vessel-operating common carriers.

(8) Equipment-Interchange Agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(d) The following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the Act and the form and content requirements of this part: Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command (MSC), if all the following conditions are met:

(1) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but on not less than one day's filing notice prior to the effective date thereof;

(2) All tenders are filed in triplicate, one copy of which is signed and maintained at the Commission's Washington Office for public inspection;

(3) A letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of the Shipping Act of 1984 and this section;

(4) Tenders submitted for filing are to be numbered by the respective common carriers as part of a distinct tariff series, with each common carrier's series to begin with the number "1" and run consecutively thereafter;

(5) Each tender which supersedes a prior tender must specifically cancel the prior tender by its series number; and

(6) Amendments or supplements to tenders must also be filed with the Commission upon not less than one day's filing notice and contain an appropriate reference to the original tender being amended or supplemented.

(e) *Controlled common carriers.* (1) A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(iv) The controlled common carrier's rates, charges, classifications, rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(2) The Commission will notify any common carrier of its classification as a controlled common carrier.

(3)(i) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(ii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

[49 FR 45379, Nov. 15, 1984, as amended at 53 FR 5773, Feb. 26, 1988; 55 FR 10243, Mar. 20, 1990]

§ 580.2 Definitions.

For the purposes of this part, the following definitions of terms shall apply unless otherwise indicated by the context of this part (for other definitions see §§ 580.3(a)(1), 580.7(a),* 580.8(a), 580.10(a)(1) and 580.12(a)):

(a) *Act* means the Shipping Act of 1984.

(b) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

(c) *Class rates* means rates applicable to all articles which have been grouped or *classified* together in a classification tariff or a classification section of a rate tariff.

(d) *Commodity rates* means rates applying to a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

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* Section 580.7 was removed at 52 FR 24005, June 26, 1987, effective July 27, 1987.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment arrangement.

(g) *Controlled common carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

(h) *Forest products* means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls.

(i) *Joint rates* means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

(j) *Local rates* means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

(k) *Loyalty contract* means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

(l) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(m) *Ocean common carrier* means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Open rate* means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual common carrier member of the conference to fix its own rates on such commodity or commodities.

(p) *Open for public inspection* means the maintenance of a complete and current set of the tariffs used by a common carrier, or to which it is a party, in each of its offices and those of its agent in every city where it transacts business involving such tariffs.

(q) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(r) *Proportional rates* means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(u) *Tariff* means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or conference of common carriers. The term *practices* refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

(v) *Tariff filing* means any tariff, or modification thereto, which is received by the Commission as properly filed pursuant to these rules.

(w) *Tariff filing, electronic,* means the transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are located within the same building as the Commission's Washington, D.C. offices.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984, as amended at 50 FR 10968, Mar. 19, 1985]

§ 580.3 Filing of tariffs; general.

(a)(1) As used in this part the terms *file, filed* or *filing,* when used with respect to the filing of tariffs with the Commission, mean actual receipt at the Commission's Washington, D.C. offices.

(2) The Commission will receive tariff filings on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time-stamped at a tariff mail drop located in the lobby of the Commission's Washington, D.C. offices.

(3)(i) Electronic tariff filings transmitted to the Commission by electronic modes will be receipted by a date/time device on the receiving machine which will imprint the date and time on the top or bottom of each received tariff page. The receiving machine will also imprint a unique registration number which must be registered with the Director, Bureau of Tariffs. Owner/operators of registered receiving machines must obtain certification from the Director as having delegated authority to receive tariff matter on behalf of the Commission.

(ii) Tariff material filed electronically must conform to all the regulations of this part applicable to permanent tariff filings, except as follows:

(A) Electronically filed tariff pages received from data processing terminals may be used for filing with the Commission;

(B) Information received and stored on a *disk* must be printed and filed without alteration;

(C) All electronically filed tariff pages including those received and stored on a *disk* must be delivered to the Commission's Tariff Library before 9:00 a.m. the next successive business day following receipt on the receiving machine; and

(D) Electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal.

(b) Tariffs shall be published and filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conference. In the alternative, publication and filing may be accomplished through an agent authorized to act for such common carrier or conference by a specific written delegation of authority.

(1) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(2) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, there

shall be filed with the Commission a written statement indicating the appointment of the agent and setting forth the exact limits of the agent's authority.

(c)(1) No common carrier or conference shall publish and file any tariff or modification thereto which duplicates or conflicts with any other tariff on file with the Commission to which such common carrier or conference is a party, whether filed by such common carrier, conference, or by an authorized agent.

(2) No common carrier shall publish and file any tariff or modification thereto which conflicts with any other tariff on file with the Commission and which names such common carrier as a participant therein.

(d) All tariffs published in a foreign language shall be accompanied by two true copies translated into the English language when submitted for filing, except that controlled common carriers shall submit three true copies translated into the English language.

(e) All tariff matter filed with the Commission shall be accompanied by a letter of transmittal which clearly identifies the tariff and pages involved. If the sender desires a receipt, a duplicate of such letter must be furnished together with a plain, self-addressed, stamped envelope measuring approximately 4½ by 9¾ inches. The duplicate letter will be stamped with the date of receipt and mailed to the sender in the envelope provided. If a duplicate letter and self-addressed stamped envelope are not submitted, a receipt will not be furnished.

(f) All tariff matter shall be filed in duplicate, except that controlled common carriers shall file all tariff matter in triplicate.

(g) Tariff filings shall be addressed to:

Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

(h) Each common carrier shall keep open for public inspection all tariffs published by it or to which it is a party in the foreign commerce of the United States.

(i) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the Act with regard to keeping tariffs open for public inspection.

(j) A common carrier's obligation to file tariffs pursuant to section 8(a) of the Act and this part must be carried out as follows:

(1) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(2) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(i) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(ii) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(k) When a common carrier is admitted to membership in a conference, cancellation of the common carrier's individual tariff (if any) in the trade served by the conference and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) shall be published and filed with the Commission and may become effective upon the date of such filing, except that:

(1) If the common carrier has an individual tariff in the trade served by the conference and cancellation of that tariff and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) would result in an increase in that common carrier's rates, the common carrier shall, 30 days prior to being admitted as a new conference member, cancel its individual tariff effective 30 days from date of publication, making reference to the conference tariff and where it may be examined, unless special permission to become effective in less than 30 days has been granted by the Commission pursuant to § 580.15; and

(2) A controlled common carrier newly admitted to membership in a conference shall, 30 days prior to admission, file notice of cancellation of any applicable independent tariff effective upon the date of admission to conference membership, unless special permission has been granted by the Commission pursuant to § 580.15.

(l) [Reserved]

(m) Copies of all tariffs on file with the Commission (including all subsequent revisions and changes thereto) shall be made available by common carriers and conferences to any person. A reasonable charge may be made for this service.

(n) New or initial tariffs shall be published and filed to become effective not earlier than 30 days after publication and filing, unless special permission to become effective on less than 30 days' notice has been granted by the Commission pursuant to § 580.15.

(o) Rules applicable to tariffs containing rates, charges, rules and regulations for through transportation, set forth in § 580.8, are additional requirements for use only for through transportation and are not a substitute for any other requirements of this part.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984, as amended at 50 FR 10968, Mar. 19, 1985]

§ 580.4 Tariff format.

(a) All tariffs which are filed and kept open to public inspection shall be clear and legible and shall be plainly printed, mimeographed, multilithed or prepared by some other similar permanent process on durable paper of good quality.

(b) No alteration in writing or erasure shall be made in any tariff publication.

(c) Sufficient marginal space of not less than three-fourths of an inch shall be allowed at the left side of each tariff page to permit insertion in tariff binders. In addition, a margin of not less than one-half inch shall be allowed at the bottom of each tariff page for application of the Commission's receipt stamp.

(d) Tariffs shall be in looseleaf form and printed on pages approximately 8½ by 11 inches. If other than a looseleaf tariff is to be filed, application for permission to make such filing shall be made to the Commission. If permission to file other than a looseleaf tariff is granted by the Commission, such permission will set forth the form and manner of filing the tariff and any amendments or supplements thereto.

(e)(1) Tariff pages shall be printed on one side only and each page after the title page shall be numbered in the upper right-hand corner, except that the anti-rebating statement, as set forth in § 580.5(c)(2)(ii), must be published on the reverse side of the tariff title page (See Exhibit No. 2 to this part) or, alternatively, at any location in the tariff, provided that reference to such location is shown on the title page thereof.

(2) Each tariff page must show the name of the common carrier or conference for whose account the tariff is issued, the effective date, the page number, the FMC number of the tariff, etc., as illustrated by Exhibit No. 4 to this part.

(3) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(f) To the extent applicable, all tariffs filed pursuant to this part shall be arranged in the following order:

Title Page;
Check Sheet (optional);
Table of Contents;
Participating Common Carrier Page;
Surcharge and/or Arbitrary/Differential/Outport Differential (or other identifying term) Section;
Rules and Regulations Section;
Index of Commodities and Classifications;
Commodity Rate Section;
Classification and Class Rate Section; and
Open Rate Section.

§ 580.5 Tariff contents.

(a) The first page of every tariff shall be a title page which shall contain the following information (see Exhibit No. 1 to this part):

(1) The name of the common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or a Vessel-Operating Common Carrier,

or the name of the conference. Tariffs filed pursuant to an agreement shall be further identified with the agreement number. A controlled common carrier subject to section 9 of the Act shall so identify itself under the common carrier name on the title page.

(2) An FMC tariff number assigned by the common carrier or conference. For example:

Smith Line Tariff FMC-1.

The first tariff filed by a common carrier or conference pursuant to this or any prior regulation shall be assigned the number FMC-1. Each tariff thereafter issued by the common carrier or conference shall be assigned the next, consecutive FMC number. Beneath the FMC tariff number shall be shown the number or numbers of any FMC tariff or tariffs cancelled by the issuance of such tariff. For example:

Smith Line Tariff FMC-14 cancels Smith Line Tariff FMC-5 and Smith Line Tariff FMC-9

or

Smith Line Tariff FMC-14 cancels Smith Line Tariff FMC-12.

(3) When an individual common carrier, partnership or joint service operates under a trade name, the legal name or names of each individual common carrier shall be shown as well as the trade name. Alternatively, reference may be made to an internal tariff page where this information is shown.

(4)(i) A list of the ports/regions covered by the tariff or reference to an internal tariff page where such ports/regions are listed. In lieu of such listing of ports, a statement of the range of ports served will be accepted if any exclusion of a port within the range or any restriction applying at a port within the range is specifically stated.

(ii) Whenever tariff application is shown by identification of a range of ports in lieu of listing individual ports, such range of ports must be within a geographical area generally served by the common carrier(s) participating in the tariff.

(5) A statement showing the type of service offered by the common carrier(s), e.g., direct service, transshipment, etc. When transshipment service is indicated, reference shall b made to the page in the tariff describing such service.

(6) A statement showing the type o rates contained in the tariff. For example: local, proportional, through class, commodity, overland common point, etc.

(7) A reference to other publications which in any manner govern the tariff. Alternatively, reference may b made on the title page to an internal page identifying such governing publications as prescribed in paragraph (c)(8) of this section.

(8) The date on which the tariff wil become effective. Every tariff in which any provision is to become effective upon a date different from the general effective date of such tariff shall so indicate in substantially the following form:

Effective: ————(except as otherwi herein provided) or (except as provided i Item No. ————) or (except as provided on page ————).

(9) The name, title and address o the person issuing the tariff or, if the common carrier or conference has appointed a tariff filing agent pursuant to § 580.3(b), the name, title and address of the agent making such filing.

(10) An expiration date if the entire tariff publication is to expire on a specified date.

(11) The names of all participating common carriers in the tariff if more than one common carrier participates. Alternatively, reference may be made to an internal page on which are listed the names of all participating common carriers (see paragraphs (c)(2) and (c)(3) of this section).

(12) The subscription price of the tariff (and any major components thereof offered separately) or a statement that the entire tariff will be furnished without charge, accompanied by a reference to a tariff rule which clearly states where subscriptions may be obtained and the materials which will be furnished to subscribers.

(b) All pages after the title page shall be numbered beginning with *Original Page 1, Original Page 2*, etc. Each page as thereafter revised shall be a consecutively numbered revision of the same page in the form required by paragraphs (a)(6) and (a)(8) of §580.10. (See Exhibit No. 4 to this part.)

For example:

> The 7th page in a tariff as originally filed would be titled *Original Page 7.* The first revision of this page would be titled *First Revised Page 7 cancels Original Page 7.*

(c) The body of the tariff shall contain the following:

(1) A table of contents containing a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall list all subjects in alphabetical order and shall show the page number and number of the item, rule or unit where such subject will be found.

(2)(i) The full legal name of each participating common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel Operating Common Carrier and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

(ii) An anti-rebate tariff provision to be effective upon filing which shall read substantially as follows (*see* Exhibit No. 2 to this part):

> (Name of company) has a policy against the payment of any rebate by the company or by any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR part 582.

(A) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's anti-rebate tariff provision in the conference tariff.

(B) In addition to the anti-rebate tariff provision, an anti-rebating certificate shall be filed by every common carrier with its initial tariff, and on each succeeding December 31. The anti-rebating certificate shall comply with the requirements of part 582 of this title, and, except for a certificate filed with an initial tariff, shall be valid for the calendar year following the December 31 filing date. Failure of a common carrier to file an anti-rebate certification with initial tariffs and publish notice of that certification in its tariffs as required by this part and part 582 of this chapter shall result in rejection of that carrier's tariff. Any common carrier who fails to file an annual anti-rebate certification as required by part 582 of this chapter will be notified by FEDERAL REGISTER publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter or file the required anti-rebate certification, its tariff will be cancelled. In the event a common carrier's rates are published in one or more conference tariffs, the name of that common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days notice period will not be cancelled; however, the common carrier will be subject to civil penalties as provided in part 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its tariff(s) have been cancelled or its name has been stricken from conference tariff(s).

(3) All trade names, if any, under which service will be provided and the names of the common carrier or common carriers operating under each such trade name if not shown on the title page.

(4) A list of the ports or ranges of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(5) A statement indicating the extent of any limitation or restriction if the application of any of the rates, charges, rules or regulations stated in the tariff are restricted to any particu-

lar port, pier, etc., or otherwise limited.

(6) A single, complete, alphabetically arranged index listing all commodities for which the tariff names rates, together with a reference to each item or page where a particular article is shown. If a rate item embraces two (2) or more commodities, each commodity shall be shown in the index. Class rate tariffs and tariffs containing both class and commodity rates shall contain, in addition to applicable item or page references, the ratings of commodities to which class rates apply. (See Exhibit No. 3 to this part.) Such index may be omitted where rates on less than 100 commodities are included in the tariff. All articles generic to different species of the same commodity should be grouped together. For example:

Paper, building; paper, printing; paper, wrapping.

(7) A full explanation of any symbols, reference marks or abbreviations used in the tariff. If such explanation does not appear on the page where the reference marks or symbols are used, such page shall refer to the page in the tariff where the explanation is given. The symbols shown in § 580.10(a)(7)(i) shall be used only for the purposes indicated therein.

(8) If governed in any manner by other publications, as may be permitted herein, a reference thereto substantially in the following form:

> This tariff is governed, except as otherwise provided herein, by Bill of Lading Tariff FMC No. ——— (or by Rules Tariff No. ———), etc.

Where such reference is fully made on the title page, reference elsewhere in the tariff is unnecessary. Governing publications must be on file with the Federal Maritime Commission.

(9) All rates applicable to the transportation of the articles or classes of articles named in the tariff. Rates shall be stated as required by § 580.6.

(10) Rules and regulations which in any way affect the application of the tariff.

(d) Specific tariff rules shall be published to govern each of the following subjects and shall be designated in all tariffs by the numbers and headings specified below. In the event that a specified rule does not apply to the service offered, the rule number and heading shall be published with a statement that the rule is not applicable. For example: *Rule No. 15. Open Rates.* Not Applicable.

(1) *Scope.* A list of the ports or range of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(2) *Application of rates.* A clear statement of all the services provided to the shipper and included in the transportation rates set forth therein.

(3) *Effective date rule.* All tariffs shall provide that the tariff rates, rules and charges applicable to a given shipment must be those published and in effect when the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

(4) *Heavy lift.*

(5) *Extra length.*

(6) *Minimum bill of lading charge(s).*

(7) *Payment of freight charges.* (i) A clear statement of all requirements for the payment of freight charges.

(ii) Currency restrictions, if any, must be specified and the basis for determining the rates of currency exchange must be set forth.

(iii) If credit is extended to shippers, the rule must include the credit terms available and the conditions upon which credit is extended. When credit applications or agreements are required, specimens of such applications or agreements shall be published as part of this rule.

(8) *Specimen bill(s) of lading.* A specimen copy of any bill of lading, contract of affreightment or other document evidencing the transportation agreement applicable to the service offered shall be submitted with the tariff, unless a separate bill of lading tariff is on file as permitted by § 580.13(a). Such documents shall not contain provisions inconsistent with the rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* A statement describing the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in ac-

cordance with § 510.23(b) of this chapter.

(10) *Application of surcharge and/or arbitraries, differentials, outport differentials or other identifying term.* Tariffs imposing upon the same shipment more than one surcharge and/or arbitrary, expressed in percentage terms, shall also clearly state the manner in which the percentages shall be applied in computing the additional charges.

(11) *Minimum quantity rates.* Tariffs naming two or more rates for different quantities of commodities covered by the same description shall state:

> When two or more freight rates are named for carriage of goods of the same description over the same route and under similar conditions and the application is dependent upon the quantity of the goods shipped, the total freight charges assessed against the shipment shall not exceed the total charges computed for a larger quantity, if the rate noted alongside a qualification specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower rate if the weight or measurement declared for rating purposes is increased to the minimum level.

(12) *Ad valorem rates.* A statement specifying the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and the additional liability, if any, assumed by the common carrier in consideration therefor.

(13) *Transshipment.* Tariffs providing for transshipment service pursuant to an ongoing agreement shall provide:

(i) The through rate;

(ii) The routings (origin, transshipment and destination ports); additonal charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and

(iii) A tariff provision substantially as follows:

> The rules, regulations and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Special rules and regulations applicable to co-loading activities of Non-Vessel-Operating Common Carriers (NVOCCs)*—(i) *Definition.* For the purpose of this section, *Co-loading* means the combining of cargo, in the import or export foreign commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs.

(ii) *Filing requirements.* All tariffs filed by an NVOCC shall contain a rule describing its co-loading activities as follows:

(A) If an NVOCC does not tender cargo for co-loading, its tariff(s) shall so indicate.

(B) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement must be noted in each of the NVOCC's tariffs.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in its tariff its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(iii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for co-loading whether under a shipper-to-carrier or carrier-to-carrier relationship shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(iv) *Co-loading rates.* No NVOCC shall offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

(15) *Open rates.* A clear and complete explanation of the extent to which conference rates have been opened pursuant to paragraphs (l) and (m) of § 580.6. Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable rules and regulations of the conference tariff will continue to govern the rates filed by each individual line, shall also be stated.

(16) *Explosives or other dangerous articles.* A clear statement of all regulations governing the transportation of explosives, inflammable or corrosive material, or other dangerous articles, or a reference to a separate publication which contains such regulations.

(17) *Green salted hides.* A rule which requires that:

(i) The shipping weight for purposes of assessing transportation charges be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in said rule; and

(ii) The shipper furnishes the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo.* Tariffs offering the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the rates assessed on the original movement when such rates are lower than prevailing rates, shall also provide that:

(i) The return of shipments be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests, consultations and complaints.* Clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims.* (i) No tariff in the foreign commerce shall limit the filing of overcharge claims with a common carrier for private settlement to a period of less than three years after accrual of the cause of action nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge.

(ii) No tariff in the foreign commerce shall require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iii) Tariffs shall contain a rule which states that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application. This rule shall clearly indicate where and by what method such claims are to be filed with the common carrier and shall further advise that such claims may also be filed with the Federal Maritime Commission. At a minimum, tariffs shall contain the following provisions:

(A) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to section 11(g) of the Shipping Act of 1984. Such claims must be filed within three years of the date the cause of action accrued; and

(B) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within twenty days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the Act.

(21) *Use of carrier equipment.* (i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent of the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. The sample agreement shall include the general terms and conditions affecting cost (e.g. maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment, including cargo containers, trailers, and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the rule and shall clearly identify the location and type of equipment to which they apply. If a carrier or conference does not have a sample equipment interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above. Where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Rule 21 should contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be included in either a separate section within the tariff or the carrier or conference must file a governing equipment interchange tariff filed in accordance with §§ 580.5(a)(7) and 580.17. In either instance, Rule 21 in the carrier or conference rate tariff shall contain only a reference to the location of the sample equipment interchange agreement and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(e) Additional rules which affect the application of the tariff shall follow immediately the rules specified in paragraph (d) of this section and shall be numbered consecutively.

(f) Where a tariff rule affects only particular items or rates, the affected items or rates shall specifically refer to such rule.

(g) No rate tariff shall require reference to any other rate tariff for determination of any applicable rate, except that:

(1) Reference may be made to another tariff for terminal and accessorial charges;

(2) Returned cargo rates accompanied by the rule specified in paragraph (d)(18) of this section are permitted;

(3) Reference may be made to another tariff (not containing rates) for commodity lists or generic descriptions as provided in paragraphs (f) and (g) of § 580.6; and

(4) Reference may be made to another tariff (not containing rates) covering:

(i) Explosives, inflammable or corrosive materials, or other dangerous articles;

(ii) Bills of lading or contracts of affreightment;

(iii) Commodity classifications; and

(iv) Routing guides or other similar tariffs as provided in § 580.13.

(5) Reference may be made to an equipment interchange tariff for free time allowed and detention or similar charges, if applicable.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984, as amended at 50 FR 31721, Aug. 6, 1985; 51 FR 30863, Aug. 29, 1986; 53 FR 5773, Feb. 26, 1988; 54 FR 20132, May 10, 1989; 54 FR 29036, July 12, 1989; 54 FR 31030, July 26, 1989; 55 FR 10242, 10243, Mar. 20, 1990; 55 FR 34929, Aug. 27, 1990; 55 FR 35318, Aug. 29, 1990]

EFFECTIVE DATE NOTE: At 54 FR 20132, May 10, 1989, § 580.5 was amended by revising paragraph (d)(3), effective July 10, 1989. At 54 FR 29036, July 11, 1989, the effective date of this amendment was postponed pending a decision on petition for reconsideration. The latter document was corrected at 54 FR 31030, July 26, 1989. At 55 FR 34929, Aug. 27, 1990, the stay was lifted, effective October 26, 1990.

§ 580.6 Statement of rates and charges.

(a) The application of all rates and charges shall be clear and definite and explicitly stated per 100 pounds, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds or some other expressly defined unit.

(b) All rates and charges shall be stated in a simple and systematic manner. Commodities and generic commodity groupings on which rates are stated shall be listed in alphabetical order. If published in the index, item numbers shall also be shown in the body of the tariff.

(c) Where rates are stated in amounts per package, the method of packing and specifications, showing size, measurement or weight of the packages to which such rates apply shall be shown.

(d) Where rates vary depending upon whether cargo is packed, crated, palletized, bundled, strapped, loose or otherwise prepared or delivered for shipment, there shall be a statement clearly and specifically governing the application of such rates. See Exhibit No. 4 to this part.

(e) Where rates and charges to or from designated ports are determined by the adding or subtracting of arbitraries or differentials to or from rates applicable at other ports, such application shall be clearly shown.

(f) A commodity item may, by use of a generic term, provide rates on a number of articles if such term contains reference to an item in the tariff which clearly defines the type of commodities contained in such generic term or which contains a complete list of such articles, or contains a reference to the FMC number of a separate tariff of the same common carrier or conference containing such definition or list of such articles.

Example: Packinghouse products as described in Item—; or packinghouse products as described under heading *Packinghouse products* in FMC No.—or successive issues thereof.

(g) A separate tariff, not containing rates, may be filed by a common carrier or conference showing a list of the commodities on which rates published by reference to generic terms will apply; rate tariffs shall be made subject thereto as provided in paragraph (f) of this section.

(h) When commodity rates are established, the description of the commodity must be specific. Rates may not be applied to analogous articles.

(i) The rate section of a tariff may include a rate applicable to all commodities, or all commodities of a class, on which specific commodity rates are not stated in the tariff, to be called *cargo, n.o.s.* (not otherwise specified), *general cargo* or other identifying name, or by broad generic heading such as *chemicals, n.o.s.*

(j) A separate tariff naming rates on a group of related commodities may be published if such tariff contains all of the rates applicable to such commodities, which are published by the same common carrier or conference, to or from the same ports or points. When such tariffs are published, reference shall be made thereto in the tariff of general application for the same common carrier or conference, to or from the same ports or points.

(k)(1) Publication of rates which duplicate or conflict with the rates published in the same or any other tariff is prohibited.

(2) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(3) Where a common carrier or conference publishes both commodity and class rates, a statement shall be published in the tariff clearly indicating which of the two rates shall apply on the commodity or commodities on which both class rates and commodity rates are published.

(l) Where a conference opens any or all rates, each tariff item so opened shall be amended to indicate the word *open* in place of the previously stated rates and shall indicate a reference to a published rule in the tariff clearly defining the word *open* as used in each tariff and indicate where the rates of the individual conference member lines on such items will be found.

(m)(1) Where a conference opens rates pursuant to paragraph (l) of this section, an individual conference member shall not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item as required by these rules. This may be accomplished by the individual common carrier (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing a separate supplement at the end of the conference tariff indicating the rates which will be charged by each individual common carrier and the governing rules and provisions of the conference tariff applicable to each common carrier. Separate open rate tariffs may also be published by a conference (or its tariff agent). When conference members publish their open rates in a separate tariff, such tariffs must reference, on the title page, the conference tariff in which the open rated condition is reflected.

(2)(i) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 580.10(a)(3)(i), except when special permission is granted by the Commission under § 580.15.

(ii) Notwithstanding paragraph (m)(2)(i) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(A) At or above the minimum level set by the conference; or

(B) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(n) Special or emergency rates, or rates conditioned upon an expiration date or other factor, shall be shown under the same commodity item, generic heading or class, in the same place in the tariff as the ordinarily applicable rates. (See Exhibit No. 4 to this part.)

(1) If only a portion of particular rates or other provisions will expire with a special date, a notation to that effect shall clearly be shown in connection with such items as indicated in Exhibit No. 4 to this part.

(2) Project rates may be placed in a special section of the tariff if the Table of Contents or Commodity Index contains a specific reference to *Project Rates*.

(o) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 4 and 5 to this part.

(p) The number of rate columns may vary as required to state rates to one or more ports, port groupings or port ranges. The width of all columns in the rate block section of tariff rate pages may vary as required. (See Exhibit No. 5 to this part.)

§ 580.7 [Reserved]

§ 580.8 Tariffs containing through rates for through transportation.

(a) *Definitions*. The following definitions shall apply for purposes of this section:

(1) *Through rate* means the single amount charged by a common carrier in connection with through transportation.

(2) *Through transportation* means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

(b) *Filing requirements*. Every common carrier and conference subject to the Act, which establishes through rates for through transportation shall file tariffs which state all such rates and related charges, rules, regulations, privileges or facilities, granted or allowed. Through rates may be filed in separate tariff publications or as a part of a port-to-port tariff. Such tariffs shall be filed and maintained in the manner set out in the Act and in accordance with the rules of this part. Through rate tariffs shall be filed in the name of the common carrier or conference subject to the Act. Through rate tariffs shall be initially filed on thirty days' notice as provided by sections 8 and 9 of the Act, unless a shorter notice is permitted pursuant to special permission. Amendments to tariffs containing through rates which provide for the addition of new inland points may, however, become effective upon publication and filing. Such tariffs shall contain the following provisions:

(1) The title page shall identify the tariff as a *through rate* tariff and shall also provide a brief description of the modes of services covered by the tariff (e.g., rail/motor/ocean services) and the trade area covered by the tariff. The trade area shall be described on the title page by naming the countries to, from or between which the through rates apply and the port(s) or range(s) of ports via which through transportation will be performed.

(2) Rule No. 1 of each through rate tariff shall provide:

(i) A clear description of the points, regions, or ports to, from or between which the rates apply. Each point, region or port shall be described by its commonly used geographic name. The utilization of U.S. postal ZIP codes is permitted; and

(ii) The name of the port or ports via which through shipments will be moved; or a clear description of the range or ranges of ports via which through shipments will be moved.

(3) A contract of affreightment clearly setting forth the responsibility for through transportation which is consistent with the holding out provided by the application of the rates and conditions of the tariff.

(c) *Multiple tariffs.* Common carriers and conferences which publish more than one through rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Rule No. 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

§ 580.9 Terminal rules, charges and allowances; free time allowed at New York.

(a) Every tariff filed pursuant to this part shall state separately all terminal or other charges, privileges or facilities under the control of the common carrier or conference which are granted or allowed to shippers.

(b) Wherever a tariff includes charges for terminal services, canal tolls or additional charges not under the control of the common carrier or conference, which merely acts as a collection agent for the charges, and the agency making such charges to the common carrier increases the charges without notice to the common carrier or conference, such charges may be increased in the common carrier or conference tariff without being subject to the 30-day advance filing requirement of this part or separately stated on the bill of lading.

(c) Every tariff naming rates on import traffic shipped through the port of New York, or to a range of ports which includes New York, shall contain a rule in compliance with part 525 of this chapter.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 580.10 Amendments to tariffs; rejection.

(a) *Tariff amendments.* (1) For the purposes of this part, *amendments* means all changes in, additions to, or deletions from a tariff.

(2) Amendments which provide for new or initial rates, or amendments which provide for changes in rates, charges, rules or other provisions resulting in an increase in cost to the shipper, shall be published and filed to become effective not earlier than 30 days after the date of publication and filing, unless special permission to become effective on less than said 30 days' notice has been granted by the Commission pursuant to § 580.15.

(3)(i) Amendments which provide for changes in rates, charges, rules, regulations or other provisions resulting in a decrease in cost to the shipper, or amendments which result in no change in cost to the shipper, may become effective upon publication and filing; except that all changes to controlled common carrier tariffs shall not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 580.15, or the change affects tariff matters which are the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(4) An amendment containing a rate on a specific commodity not previously named in a tariff which is a reduction or no change in cost to the shipper may become effective upon publication and filing, if:

(i) The tariff contains a *cargo, n.o.s.* or similar general cargo rate which would otherwise be applicable to the specific commodity;

(ii) The specific commodity rate is equal to or lower than the previously applicable general cargo rate; and

(iii) The common carrier is not a controlled common carrier which has not received special permission authorizing the amendment.

(5) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher *cargo, n.o.s.* or similar general cargo rate, is a rate increase and shall be published and filed to become effective not earlier than 30 days after the date of filing in the absence of special permission for an earlier effective date pursuant to § 580.15.

(6) Looseleaf tariffs shall be amended by reprinting the entire page upon which any modification is made. An amended tariff page shall be designated in the upper right-hand corner as a *revised page* in the manner illustrated by Exhibit No. 4 to this part. For example:

First revised page 1;
or
First revised page 21.

(7)(i) The revised page filed to accomplish a tariff amendment shall reprint the page to be replaced in its entirety, changing only the matter on the page which is modified. Changes in existing rates, charges, classifications, rules or other provisions accomplished by an amendment shall be indicated on the revised page by the following uniform symbols:

(R) To denote a reduction.

(A) To denote an increase.

(C) To denote changes in wording which result in neither an increase nor a decrease in charges.

(D) To denote a deletion.

(E) To denote an exception to a general change.

(N) To denote reissued matter.

(I) To denote new or initial matter.

(K) To denote a rate or charge that is filed by a controlled common carrier member of a conference under independent action.

(ii) An explanation of such symbols shall be set forth in the tariff as required by § 580.5(c)(7).

(8) Each revised tariff page shall cancel the previously issued page upon which a change is made. The previous page being cancelled shall be indicated immediately under the designation of the new revised page number as illustrated by Exhibit No. 4 to this part. For example:

First revised page 1 cancels original page 1;
or
Fifth revised page 21 cancels fourth revised page 21.

All matter on a cancelled page which is not being changed shall be reissued on the revised page as it appeared on the page being cancelled.

(9) Each revised page shall, in the upper right-hand corner, state the effective date of the changes made on that page. Such effective date shall be subject to the requirements of sections 8 and 9 of the Act and of this section. Revised pages may also state the issue date.

(10) When a revised page cancelling a previous page deletes any matter contained in the previous page, the deletion shall be indicated by the symbol "(D)" and any other symbol under paragraph (a)(7)(i) of this section applicable to the effect of the deletion upon the common carrier's rates or charges.

(11) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted

by the Commission, shall show in connection with such change the notation required by § 580.15(f).

(12) Increased rates brought forward from a previously filed page prior to their effective date, shall be designated with the symbol "(N)" as *reissued* and state their original effective date.

(13) If, on account of expansion of matter on any page, it becomes necessary to add an additional page in order to accommodate said new matter, such additional page (except when it follows the final page) shall be given the same number as the previous page with a letter suffix unless all subsequent pages are reissued and renumbered. For example:

Original Page 4-A, Original Page 4-B, etc.

If it is necessary to change matter on Original Page 4-A it may be done by issuing First Revised Page 4-A which shall indicate the cancellation of Original Page 4-A.

(14) When a revised page deletes rates, rules or other provisions previously published on the page which it cancels and such rates, rules or provisions are published on a different page, the revised page shall make a specific reference to the page on which the rates, rules or provisions will be found and the page to which reference is made shall contain the following notation in connection with such rates, rules or other provisions:

> For (here insert rates, rules or other provisions in question) in effect prior to the effective date hereof, see page ——.

Subsequently revised pages of the same number shall omit this notation insofar as this particular tariff matter is concerned.

(b)—(c) [Reserved]

(d) *Rejection of tariff amendments or other tariff publications.* (1) Any amendment (or other tariff publication) submitted for filing which fails in any respect to conform with the Act, or with the provisions of this part, is subject to rejection or partial rejection. When tariff matter is rejected, either in whole or in part, the Commission, acting through a designated official, will inform the person tendering the material for filing of the rejection by telegram, cablegram or letter.

(2) Upon receipt of notice of a rejection, the filing party shall immediately remove such rejected material from its effective tariff and immediately notify all subscribers to affected tariffs that the rejected material is void.

(3) The number assigned to an amendment (or other tariff publication) which has been rejected may not be used again. The rejected material may not be referred to in any subsequent amendment (or other tariff publication) in any manner whatsoever, except that a notation shall appear at the bottom of any new tariff matter issued to replace rejected matter which reads substantially as follows:

> Issued in lieu of —— Page No. —— rejected by the Federal Maritime Commission.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 580.11 Supplements to tariffs.

(a) Supplements to tariffs may be filed only to accomplish the following:

(1) To cancel a tariff in whole or in part.

(2) To provide for a general rate decrease applicable to all, or substantially all, the commodities listed in a tariff.

(3) To provide for a general rate increase applicable to all, or substantially all, the commodities listed in a tariff.

(4) To indicate seasonal discontinuance, temporary suspension or reinstitution of service covered by a tariff.

(5) To provide for change in name of the publishing common carrier or its tariff agent.

(6) To indicate controlled common carrier rates which have been suspended by the Commission.

(b) Supplements filed pursuant to paragraphs (a)(2) and (a)(3) of this section which do not change the rates applicable to all listed commodities shall bear one of the following notations:

> (1) The general rate increase/decrease provided for on this page applies to all commodities stated herein except the following (here list the excepted commodities or commodity item numbers); or
>
> (2) The general rate increase/decrease provided for on this page applies to all com-

modities stated herein except those noted on page——.

(c) General rate change supplements (paragraphs (a) (2) and (3) of this section) shall bear an expiration date that coincides with the date the changes will be reflected in the rates and charges in the tariff. Such date shall not be more than 90 days after the date of filing. No more than one such supplement may be in effect at any time.

(d) Additional supplements to other than looseleaf tariffs shall be filed as provided by any special permission authority granted by the Commission pursuant to §§ 580.4(d) and 580.15.

(e) Supplements shall be numbered consecutively on the upper right-hand corner of each page. For example:

Supplement No. 1 to FMC Tariff No. ——.

(f) General rate increase/decrease supplements filed by controlled common carriers are subject to the 30-day notice requirements of § 580.10, unless special permission has been granted pursuant to § 580.15 or the change affects tariff matter which is the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(g) *Treatment of suspended tariff matter (controlled common carriers).* (1) Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) Upon receipt of a suspension order, the controlled common carrier shall immediately file a supplement which:

(i) Contains the specific rates, charges, classifications or rules suspended;

(ii) Cites the date upon which the suspension becomes effective; and

(iii) States that all use and application of the suspended tariff matter is deferred for the period specified in the suspension order.

(3) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter may become effective immediately upon filing or upon the effective date of the suspension, whichever is later. In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(i) The filing controlled common carrier shall identify the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or rules resulting in total charges which equal or are lower than its own.

(ii) All replacement filings shall state on the appropriate tariff page the following:

Filed pursuant to 46 U.S.C. app. 1708(d) and 46 CFR 580.11(g).

§ 580.12 Time/volume rates.

(a) *Definition. Time/volume rate,* for the purposes of this section, means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *General requirements.* (1) Time/volume rates may be offered by common carriers or conferences. All rates, charges, classifications, rules and practices concerning time/volume rates must be published in an applicable tariff on file with the Commission. The time/volume rate offering must identify the shipment records which will be maintained to support the rate.

(2) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(3) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in the applicable tariff.

(4) Shipper notices and shipment records supporting a time/volume rate shall be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(c) *Continuation of contracts.* Any contract with respect to a time/volume rate entered into prior to June 18, 1984, pursuant to former § 536.7, and in effect on that date, shall be permitted to remain in effect for the duration of the term specified in the contract or until June 17, 1985, whichever occurs first.

§ 580.13 Governing tariffs.

(a) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be separately published as a *rules tariff, bill of lading tariff,* or *equipment interchange tariff* as provided in §§ 580.5(c)(10), (d)(8) and (21). Classifications of freight and similar tariff matter may also be published and filed as separate *governing tariffs.* Rate tariffs affected by such governing publications shall be made expressly subject thereto by the inclusion of a reference in substantially the following form:

> Except as otherwise provided, this tariff is governed by (insert type of tariff) FMC No. ——.

(b) Except for equipment interchange tariffs, no rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive material, or other dangerous articles, shall contain (as required by § 580.5(d)(16)) the rules and regulations issued by the common carrier or conference governing the transportation of such articles or reference to a separate publication, commercial or governmental, where such regulations are available to the general public.

[49 FR 45379, Nov. 15, 1984, as amended at 55 FR 10242, Mar. 20, 1990]

§ 580.14 Transfer of operations, transfer of control, changes in common carrier name and changes in conference membership.

(a) Whenever a common carrier with an individual tariff on file changes its name or transfers operating control to another person, the person who will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new common carrier.

(b) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(c) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

§ 580.15 Applications for special permission.

(a)(1) Section 8(d) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. Section 9(c) of the Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(2) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the

attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization to file the tariff publication. Such applications shall be accompanied by a filing fee of $90.

(c) Application for special permission shall be made only by cable, telegram or letter except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee of $90.

(d)(1) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission.

(2) If the exact authority granted by the special permission is not used, and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(e) Applications for special permission shall contain the following information:

(1) The name of the conference or carrier.

(2) The FMC number and description of the specific tariff involved.

(3) The rate, commodity, rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(f) Every tariff or tariff amendment filed pursuant to special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. ——.

The filing common carrier(s) shall fill in the blank with the special permission letter and number assigned by the Commission. For example: No. F-1212 or No. CC-1212.

§ 580.16 Loyalty contracts.

(a) A sample of any loyalty contract, as defined in this part, must be filed in the applicable tariff together with rules which set forth the scope and application of the contract system.

(b) The use of any sample loyalty contract and applicable rules filed for inclusion in a tariff under paragraph (a) of this section shall be presumed to be *in conformity with the antitrust laws*, within the meaning of section 10(b)(9) of the Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

§ 580.17 Equipment interchange tariffs.

(a) Equipment interchange tariffs may be filed as provided in §§ 580.5(d)(21) and 580.13(a). They shall be filed in accordance with the tariff filing requirements of part 580, except as provided herein. The tariff shall be arranged in the following order:

(1) Title Page
(2) Check Sheet (optional)
(3) Table of Contents
(4) Explanation of Symbols, Abbreviations and Reference Marks
(5) Rules and Regulations
(6) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall include Rules 1 (Scope, § 580.5(d)(1)) and 21 (Use of Carrier Equipment, § 580.5(d)(21)). Required Rules 2 through 20 shall be noted as *Not Applicable*. Equipment interchange tariffs need not reference carrier or conference rate tariffs.

[55 FR 10242, Mar. 20, 1990]

§ 580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
580.3	3072-0009
580.7(f)	3072-0044
580.8 through 580.15	3072-0009
580.5(d)(14)	3072-0046

[49 FR 45379, Nov. 15, 1984, as amended at 50 FR 31721, Aug. 6, 1985]

EXHIBIT NO. 1 TO PART 580

Title Page (Front) Format
(See § 580.5(a))

ORIGINAL TITLE PAGE
TO
FMC NO. 1

EFFECTIVE DATE: JANUARY 1, 1985

CAPLETON STEAMSHIP LINE

A VESSEL OPERATING COMMON CARRIER

FREIGHT TARIFF NO. 1

NAMING
CLASS AND COMMODITY RATES
AND
RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF
GENERAL COMMODITIES
VIA
DIRECT/TRANSSHIPMENT SERVICE
(SEE PAGE 8)

FROM
U. S. PACIFIC COAST PORTS
(AS SPECIFIED IN RULE 1)
TO
PORTS IN JAPAN AND KOREA
(AS SPECIFIED IN RULE 1)

FOR REFERENCE TO GOVERNING PUBLICATIONS, SEE PAGE 11.

FOR LIST OF PARTICIPATING COMMON CARRIERS, SEE PAGE 4.

SUBSCRIPTION PRICE: U. S. $200.00 PER CALENDAR YEAR OR FRACTION THEREOF, INCLUDING ALL SUPPLEMENTARY MATTER AND REVISIONS THERETO. SEE RULE NO. 23.

ISSUED BY:

CARLETON B. JOHANSEN
ISSUING OFFICER
6402 BRYAN STREET
BUCKLER, CALIFORNIA 94199

EXHIBIT NO. 2 TO PART 580

Title Page (Reverse) Format
(See §§ 580.4(e) and 580.5(c)(2))

ANTI-REBATING POLICY

Carleton Steamship Line has a policy against the payment of any rebate by the company or any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

EXHIBIT NO. 3 TO PART 580

Class Tariff or Class and Commodity Tariff Index
(See § 580.5(c)(6))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		1st Rev.	28
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS TO : PORTS IN JAPAN AND KOREA		Original	28
		EFFECTIVE DATE:	
		January 3, 1985	

COMMODITY AND/OR CLASS RATE INDEX

Commodity	Class or Item Number	Commodity	Class or Item Number
Abrasives...................	5	Implements, Agricultural....	1000
Acids.......................	1	Iron or steel articles, viz:	
Agricultural Implements...	1000	Cable, rope and strand.....	2400
		Pipes and tubes............	100
		Structural, N.O.S..........	85
		Washers....................	1315

NOTE: Where a tariff publishes both class and commodity rates, different numerical series must be used to differentiate between item numbers and class rating numbers. For example, as shown above, the class ratings are numbered from 1 to 100 and the commodity item numbers series begin with 1000.

EXHIBIT NO. 4 TO PART 580

Single Level of Rates, Packed/Unpacked Rates, Special Rates, Emergency Rates and Valuation Rates

(See §§ 580.4(e)(2); 580.5(b); 580.6(d); 580.6(n); 580.6(o) and 580.10(a))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		2nd Rev.	33
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS TO : PORTS IN JAPAN AND KOREA		1st Rev.	33
Except as otherwise provided herein, rates apply per ton of 1000 Kilos (W) or 1 Cubic Metre (M), whichever produces the greater revenue.		EFFECTIVE DATE: January 6, 1985	

Commodity Description and Packaging	Rate Basis	Rates in U.S. Dollars		Item No.
		Japan	Korea	
Fans, electric	W/M	76.00	---	3100-00
Fish, frozen, in bulk	W	230.00	237.00	3110-90
Iron and steel:				3600-10
Turnbuckles	W	29.50	32.00	
Emergency rate effective 1-15-85 to 3-15-85(R)1/	W	26.00	28.00	
Lime, hydrated, packed	W	29.25	34.75	4125-40
Medicines, patent preparations:				5000-10
Values up to $200 per 40 CFT	M	34.00	37.00	
Values exceeding $200 but not exceeding $500 per 40 CFT	M	52.75	58.00	
Values exceeding $500 per 40 CFT	M	67.75	74.00	
Tractors:				7127-05
Unpacked	W/M	145.00	154.00	
Packed	W/M	140.00	149.00	
Zinc, viz:				9259-00
Bars, circles, ingots, pigs, plates, sheets and slabs	2240 lbs or 40 CFT	---	49.00	
Ingots: Special rate effective 1-15-85 expiring 3-15-85(R)1/	2240 lbs	---	47.00	
Ingots: Special rate effective 3-16-85 expiring 6-15-85(R)1/	2240 lbs	---	48.00	

1/Symbols denoting a change, as set forth in § 580.10(a)(7), must be shown in the commodity description column either to the left or right of the commodity.

NOTE: All tariff pages, except the title page and reverse side of the title page, shall be filed in the form and manner as prescribed above the rate block on this page.

[49 FR 45379, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

EXHIBIT NO. 5 TO PART 580

Class Rate Tariff or Class Rate
Section of Class and Commodity Tariff
(See §§ 580.6(o) and 580.6(p))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		ORIGINAL	35
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS			
TO : PORTS IN JAPAN AND KOREA		EFFECTIVE DATE:	
CLASS RATES		January 1, 1985	

Except as otherwise provided, rates apply per ton of 2240 lbs. or 40 CFT whichever produces the greater revenue.	CLASS			
PORTS TO WHICH RATES APPLY	5	10	15	20
Ports A, B, C	$50.00	$82.50	$95.00	$102.00
Ports D, E, F, G	47.00	56.30	84.00	90.00
Ports H, I	37.75	53.00	66.00	78.00

PART 581—SERVICE CONTRACTS

Sec.

581.1 Definitions.
581.2 Scope.
581.3 Filing and maintenance of service contract materials.
581.4 Form and manner.
581.5 Content of essential terms; contingency clauses.
581.6 Availability of essential terms.
581.7 Modification, termination or breach not covered by the contract.
581.8 Contract rejection and notice; implementation.
581.9 Confidentiality.
581.10 Recordkeeping and audit.
581.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714-1716 and 1718.

SOURCE: 52 FR 24005, June 26, 1987, unless otherwise noted.

§ 581.1 Definitions.

In this part:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701-1720).

(b) *Common carrier* or *carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(c) *Commission* means the Federal Maritime Commission.

(d) *Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement.

(e) *Contract party* means any party signing a service contract as an ocean common carrier, conference, shipper or shippers' association.

(f) *Essential Terms Publication* means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract.

(g) *File* or *Filing* of service contract materials means actual receipt at the Commission's Washington, DC offices.

(h) *Geographic area* means the general location from which and/or to which cargo subject to a service contract will move in through service.

(i) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(j) *Ocean common carrier* means a vessel-operating common carrier.

(k) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(l) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(m) *Port range* means those ports in the country of loading or unloading of service contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range.

(n) *Service contract* means a contract between a shipper or shippers' association and an ocean common carrier or conference, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features, The contract may also specify provisions in the event of nonperformance on the part of either party.

(o) *Service contract records* means such documents and information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met.

(p) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(q) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(r) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(s) *Statement of essential terms* means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication.

(t) *Submit* or *submission* means *file* or *filing* under this section.

(u) *Tariff of general applicability* means the effective tariff, on file at the Commission under part 580 of this chapter, that would apply to the transportation in the absence of a service contract.

[52 FR 24005, June 26, 1987; 52 FR 27612, July 22, 1987, as amended at 52 FR 33939, Sept. 9, 1987]

§ 581.2 Scope.

Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

§ 581.3 Filing and maintenance of service contract materials.

(a) *Filing.* There shall be filed with the Director, Bureau of Domestic Regulation, the following:

(1) *Service contract.* On or before the effective date of every service contract, a true and complete copy of the contract shall be submitted in form and content as provided by § 581.4(a) and § 581.5, in single copy contained in a double envelope which contains no other material, as follows:

(i) The outer envelope shall be addressed to the Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, DC 20573.

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: "This Envelope Contains a Confidential Service Contract".

(iii) The top of each page of a filed service contract shall be stamped *Confidential.*

(2) *Statement of essential terms.* At the same time as the filing of the service contract under paragraph (a)(1) of this section, the statement of essential terms of the contract shall be submitted:

(i) In form and content as provided in § 581.4(b) and § 581.5;

(ii) In tariff format;

(iii) On page(s) to be included in the Essential Terms Publication as described in paragraph (b) of this section; and

(iv)(A) With an accompanying transmittal letter in an envelope which contains only matter relating to essential terms; and

best copy available

(B) The envelope and the inside address on the transmittal letter are to be addressed to the "Director, *Bureau of Domestic Regulation*, Federal Maritime Commission, Washington, DC 20573."

(3) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (a)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent essential terms to similarly situated shippers under § 581.6(b)(5);

(ii) Termination by mutual agreement, breach or default not covered by the service contract under § 581.7(b);

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under § 581.5 through § 581.8;

(iv) Final settlement of any account adjusted as described in paragraph (a)(3)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under § 581.4(a)(1)(v); or

(B) The list of affiliates under § 581.4(a)(1)(vi) of any contract party entitled to receive or authorized to offer services under the contract.

(b) *Essential Terms Publication; maintenance.* Each carrier or conference shall maintain a single, current Essential Terms Publication in the form prescribed under § 581.4(b)(2).

(c) *Who must file.* (1) As further provided in paragraph (c)(2) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an Essential Terms Publication, shall be upon:

(i) A service contract signatory carrier which is not a member of a conference for the service covered by the contract; or

(ii) The conference which:

(A) Is signatory to the service contract; or

(B) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

(2) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the Essential Terms Publications of both the conference(s) and carrier(s) involved, which shall comply with all other Essential Terms Publication filing and maintenance requirements under paragraph (b) of this section and § 581.4(b).

(d) *Exempt commodities.* (1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(2) An exempt commodity listed in paragraph (d)(1) of this section may be included in a service contract filed with the Commission only if: (i) There is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity; or (ii) the contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(3) Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

[52 FR 24005, June 26, 1987, as amended at 52 FR 27553, July 22, 1987]

§ 581.4 Form and manner.

(a) *Service contract.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) On the first page, preceding any other provisions:

(i) A unique service contract number bearing the prefix "SC";

(ii) The FMC number [FMC No. ——] of the carrier's or conference's Essential Terms Publication;

(iii) A reference to the statement of essential terms number ["ET No.—"] as provided in paragraph (b)(1)(iii) of this section;

(iv) The FMC number(s) [FMC No. ——] of the tariff(s) of general applicability;

(v) The names of the contract parties. Any further references in the contract to such parties shall be consistent with the first reference (*e.g.*, "[exact name]," "carrier," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (a)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information; and

(2) Commencing on or following the first page of the service contract:

(i) The complete terms of the contract, including all essential terms required under § 581.5; and

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 581.10.

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Rule 21 and the applicable FMC tariff number only.

(b) *Essential terms*—(1) *Statement of essential terms.* Every statement of essential terms shall:

(i) Be printed in black on yellow paper;

(ii) Be subject to the form and manner requirements applicable to governing tariffs as set forth in part 580 of this chapter;

(iii) Be identified by an essential-terms number bearing the prefix "ET No." which shall be located on the top of each page of the statement of the essential terms; and

(iv) Contain on the first page, in a manner similar to that set forth in § 580.5(a)(8) and § 580.5(a)(10) of this chapter, the period of availability of essential terms to similarly situated shippers under § 581.6(b), *i.e.*, both the beginning date [which shall be the date the contract is filed at the Commission] and the expiration date [which shall be no less than 30 days after the beginning date].

(2) *Essential Terms Publication.* The Essential Terms Publication shall:

(i) Have all its pages printed in black on yellow paper;

(ii) Be subject to the form and manner requirements applicable to governing tariffs as set forth in part 580 of this chapter;

(iii)(A) Contain a currently maintained *Index of Statements of Essential Terms* structured as follows:

ET No.	Effective date	Expiration date	Page No(s).	Section No(s).	Date of cancellation of page(s)

The Index shall include for every statement of essential terms, the ET number, as provided in paragraph (b)(1)(iii) of this section, the effective duration, as provided in § 581.5(a)(3)(i), the page and section number(s) [where used], and a column for cancellation dates which shall be used as an alternative to cancelling each individual page of the Essential Terms Publication; and

(B) The statement of essential terms may not be cancelled until after the contract(s), including any renewal or extention, has expired. In the event a contract is terminated, the effective date of the termination shall be used as the date of cancellation;

(iv) Include an alphabetical index of the commodities covered by the service contracts in which each commodity shall make reference to the relevant ET number or numbers;

(v) Contain on its title page, or in a rule, reference to each carrier's or conference's tariff of general applicability; and

(vi) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under the Act and this chapter.

[52 FR 24005, June 26, 1987, as amended at 55 FR 10243, Mar. 20, 1990]

§ 581.5 Content of essential terms; contingency clauses.

(a) *Essential terms:*

(1) May not be uncertain, vague or ambiguous;

(2) May not contain any provision permitting modification by the parties other than in full compliance with this part; and

(3) Shall include the following:

(i) The *duration* of the contract, stated as a specific, fixed time period, with a beginning date and ending date;

(ii) The *origin and destination port ranges* in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of *port ranges* or *geographic areas* but shall reflect the actual locations agreed to by the contract parties;

(iii) *The contract, rates or rate schedule(s)*, including any additional or other charges [*i.e.*, general rate increases, surcharges, terminal handling charges, etc.] that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; *Provided, however*, that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

(iv) *The commodity or commodities* involved;

(v) *The minimum quantity of cargo or freight revenue* necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(vi) The *service commitments* of the carrier, conference or specific members of a conference such as, assured space, transit time, port rotation or similar service features;

(vii) *Liquidated damages for nonperformance*, if any; and

(viii) Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied;

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential terms of the contract.

(b) *Notice.* Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(1) Any account adjustment resulting from either liability for liquidated damages under paragraph (a)(3)(vii) of this section, or the occurrence of an event described in paragraph (a)(3)(viii) of this section; and

(2) Final settlement of any account adjusted under paragraph (b)(1) of this section.

(c) *Issuance of proposed final accounting.* Any proposed final account adjustment resulting from liability for liquidated damages or the occurrence of an event under paragraph (b)(1) of this section shall be issued to the appropriate contract party within 6 days of the termination or discontinuance of the service contract.

[52 FR 24005, June 26, 1987, as amended at 53 FR 44885, Nov. 7, 1988]

§ 581.6 Availability of essential terms.

(a) *Availability of statement.* statement of the essential terms o each service contract as set forth in tariff format shall be made available to the general public pursuant to the requirements of this section and §§ 581.3, 581.4(b) and 581.5.

(b) *Availability of terms.* (1) The essential terms of an initial service contract shall be made available to all other shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the service contract as may be adjusted under § 581.8(d).

(2) Whenever a shipper or shippers' association desires to enter into a service contract with the same essential terms, a request shall be submitted to the carrier or conference in writing.

(3) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(4) The service contract resulting from a request under this section may not go into effect until an executed copy is filed with the Commission under this section. No additional statement of essential terms need be filed.

(5) In the case of any expressly described event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 581.5(a)(3)(viii), the new essential term(s) shall be immediately made available in writing to other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under § 581.3(a)(3)(i).

§ 581.7 Modification, termination or breach not covered by the contract.

For purposes of this part:

(a) *Modifications.* The essential terms originally set forth in a service contract may not be amended but may be corrected pursuant to paragraph (b) of this section.

(b) *Corrections.* (1) Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the service contract to be corrected;

(ii) A copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(2)(i) If the request is granted, the carrier or conference shall file the corrected contract provisions and a corrected statement of essential terms and those corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected contract. The provisions of § 581.6(b)(2)-(4) shall otherwise apply.

(ii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(iii) The provisions of paragraph (b)(2)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms publication.

(c) *Mutual termination or shipper failure to meet cargo minimum.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(1) Further or continued implementation of the service contract is prohibited;

(2) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment; and

(3) Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(i) The occurrence of the contract termination, breach or default under this paragraph;

(ii) Any rerating or other account adjustment resulting from the contract termination, breach or default under this paragraph; and

(iii) Final settlement of the account adjusted under paragraph (b)(3)(ii) of this section.

(4) Any proposed rerating or other final account adjustment resulting from termination, breach or default under this paragraph shall be issued by the carrier or conference to the shipper or shippers' association within 60 days of the termination, breach or default of the service contract.

[52 FR 24005, June 26, 1987, as amended at 54 FR 1366, Jan. 13, 1989]

§ 581.8 Contract rejection and notice; implementation.

(a) *Initial filing and notice of intent to reject.* (1) Within 20 days after the initial filing of the contract and statement of essential terms, the Commission may notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an explanation of the reasons for such intent to reject.

(2) The parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract and/or statement of essential terms, modified to satisfy the Commission's concerns, as set forth in paragraph (a)(1) of this section.

(b) *Rejection.* The Commission may reject the contract and/or statement of essential terms if the objectionable contract or statement:

(1) Is not resubmitted within 20 days of the notice of intent to reject; or

(2) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (a)(2) of this section, but still does not conform to the form, content or filing requirements of the Act or this part, as set forth in paragraph (a)(1) of this section.

(c) *Implementation; prohibition and rerating.* (1) Performance under a service contract may begin without prior Commission authorization on the day both the service contract and statement of essential terms are on file with the Commission, except as provided in paragraph (c)(2) of this section;

(2) When the filing parties receive notice that the service contract or statement of essential terms has been rejected under paragraph (b) of this section:

(i) Further or continued implementation of the service contract is prohibited;

(ii) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(iii) Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(A) The rerating or other account adjustment resulting from rejection under this paragraph; and

(B) Final settlement of the account adjusted under paragraph (c)(2)(iii)(A) of this section.

(d) *Period of availability.* The minimum 30-day period of availability of essential terms required by § 581.6(b) shall be suspended on the date of the notice of intent to reject a service contract and/or statement of essential terms under paragraph (a)(1) of this section and a new 30-day period shall commence upon the resubmission thereof under paragraph (a)(2) of this section.

§ 581.9 Confidentiality.

(a) *Service contracts.* All service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(b) *Amendments to non-essential terms.* Amendments to non-essential terms of a service contract shall be accorded similar confidential treatment.

§ 581.10 Recordkeeping and audit.

(a) Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(b) Every common carrier or conference shall, upon written request of the Director, Bureau of Investigations or the Director of any District Office, submit requested service contract records within 30 days from the date of the request.

(c) Service contract records shall be maintained in the United States; provided, however, that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (b) of this section.

(d) If service contract records are not made available to the Commission as provided in paragraph (b) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (c) of this section.

[52 FR 33940, Sept. 9, 1987]

EDITORIAL NOTE: At 52 FR 33940, Sept. 9, 1987 in § 581.10 paragraphs (a) and (b) were revised, effective November 9, 1987; and paragraphs (c) and (d) were added and their effectiveness was stayed until further notice by the Commission.

For the convenience of the user, the superseded text appears below.

§ 581.10 Recordkeeping and audit.

Every common carrier or conference shall:

(a) Maintain service contract shipment records currently and for a period of five years from the termination of each contract; and

(b) Tender service contract shipment records to the Commission for inspection upon request.

§ 581.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (46 CFR part 581) have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0044.

PART 582—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.
582.1 Scope.
582.2 Form of certification.
582.3 Reporting requirements.
582.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
APPENDIX A TO PART 582—CERTIFICATION OF POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714-1716.

SOURCE: 51 FR 30864, Aug. 29, 1986, unless otherwise noted.

§ 582.1 Scope.

(a) The requirements set forth in this part are binding upon every common carrier by water and ocean freight forwarder in the foreign commerce of the United States and, at the discretion of the Commission, will apply to any shipper, shippers' association, marine terminal operator, or broker. In the case of a joint service operated as a single entity, the joint service, rather than the participants, is responsible for the provisions of this part.

(b) Information obtained under this part will be used to maintain continuous surveillance over common carrier and ocean freight forwarder activities and to deter rebating practices. Failure to file the required certification may result in a civil penalty of $5,000 for each day such violation continues. Failure of a common carrier to file an anti-rebate certification and publish notice of certification in its tariffs as provided by this part and part 580 of this chapter will result in tariff cancellation effective forty-five (45) days after notice, as provided in § 580.5(c)(2)(ii)(B) of this chapter or, if an initial tariff filing, rejection. In the event a common carrier's rates are published in one or more conference tariffs, the name of the common carrier will be stricken from the list of carriers participating in those conference tariffs. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five days notice period will not be cancelled; however, those common carriers will be subject to civil penalties. Failure of an ocean freight forwarder to file an anti-rebate certification as provided by this part and part 510 of this chapter will result in suspension of that ocean freight forwarder's license effective forty-five (45) days after notice, as provided in § 510.16(a)(6) of this chapter. The license of any freight forwarder who files an anti-rebate certification after December 31 but before the end of the forty-five days notice period will not be suspended; however, those freight forwarders will be subject to civil penalties. Failure of an ocean freight forwarder applicant to include an anti-rebate certification with a license application as provided by this part and part 510 of this chapter will result in rejection of that ocean freight forwarder applicant's license application, as provided in § 510.25(b) of this chapter.

[51 FR 30864, Aug. 29, 1986, as amended at 55 FR 35319, Aug. 29, 1990]

§ 582.2 Form of certification.

(a) The Chief Executive Officer, *i.e.*, the most senior officer within the firm designated by the board of directors, owners, stockholders, or controlling body as responsible for the direction and management of the firm, of each common carrier and ocean freight forwarder and, when so ordered by the Commission, the Chief Executive Officer of any shipper, shippers' association, marine terminal operator, or broker, shall file with the Secretary, Federal Maritime Commission, a written certification, under oath, as prescribed in the format in appendix A to this part, attesting:

(1) That it is the stated policy of the firm that the payment, solicitation or receipt by the firm of any rebate which is unlawful under the Shipping Act of 1984, is prohibited;

(2) That this policy was recently promulgated to each owner, officer, employee, and agent of the firm; and

(3) That the firm will fully cooperate with the Commission in any investigation of illegal rebating.

(b) A description of the details of the measures instituted within the firm or otherwise to prohibit its involvement in the payment or receipt of illegal rebates shall be attached to the certification.

§ 582.3 Reporting requirements.

(a) Every common carrier required by this part to file a written certification in the form prescribed by § 582.2, shall file such certification with its initial tariff and, thereafter, on or before December 31 of each year.

(b) Every licensed ocean freight forwarder, required by § 510.25 of this title to file a written certification in the form prescribed by § 582.2 of this part, shall file such certification on or before December 31 of each year. Every applicant for an ocean freight forwarder license shall file such certification with its license application.

(c) The certification required by this section shall be valid for the remainder of the calendar year following the initial filing of a tariff or granting of an ocean freight forwarder license and, thereafter, shall be valid for the calendar year following the December 31 filing date specified in 46 CFR 510.25, 580.5(c)(2)(ii), and 582.3(a) and (b).

(d) Every person other than a common carrier or ocean freight forwarder which is ordered by the Commission pursuant to § 582.2 to file a written certification shall file such certification in the manner prescribed by the Commission.

(e) In those instances in which a single firm operates in more than one capacity, such as both a non-vessel-operating common carrier and an ocean freight forwarder, a single certificate may be submitted to satisfy the annual reporting requirements of this section.

§ 582.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement.

Section	Current OMB Control No.
582.2 through 582.4	3072-0028

[49 FR 36858, Sept. 20, 1984]

APPENDIX A TO PART 582—CERTIFICATION OF POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

46 CFR Part 582

I, (Name of affiant), state under oath that I am the Chief Executive Officer (State exact title) of (Exact names of firm), hereinafter referred to as *The Firm*, and that:

1. It is, and shall continue to be, the policy of The Firm to prohibit its participation in the payment, solicitation, or receipt of any rebate, directly or indirectly, which is unlawful under the provisions of the Shipping Act of 1984.

2. Each owner, officer, employee and agent of The Firm was notified or reminded of this policy on (Date).

3. The Firm affirms that it will cooperate fully with the Federal Maritime Commission in any investigation of suspected rebating in United States foreign trades.

4. Attached hereto is a description of the details of measures instituted, within the Firm or otherwise, to prohibit its involvement in the payment or the receipt of illegal rebates in the foreign commerce of the United States.

The period covered by this Certification is from (Date) to (Date).

The Firm is a (check each block applicable):

________Broker

________Freight Forwarder (License No.______)

________Marine Terminal Operator

________Non-Vessel-Operating Common Carrier

________Shipper

________Shippers' Association

________Vessel Operating Common Carrier

____

(Signature of affiant)

Subscribed to and sworn before me this __________ day of ________, 19______.

____

Notary Public

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

Sec.
585.1 Purpose.
585.2 Scope.
585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.
585.4 Petitions for section 19 relief—General—Who may file.
585.5 Petitions—How filed.
585.6 Petitions—Contents.
585.7 Petitions—Amendment or dismissal of.
585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.
585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.
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585.12 Production of information—Failure to produce.
585.13 Postponement, discontinuance, or suspension of action.
585.14 Content and effective date of regulation.

AUTHORITY: 5 U.S.C. 553; sec. 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); secs. 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1714 and 1716; Reorganization Plan No. 7 of 1961, 75 Stat. 840; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 49 FR 45404, Nov. 15, 1984, unless otherwise noted.

§ 585.1 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.2 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or which preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are otherwise unfavorable to shipping in the foreign trade of the United States;

(d) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally-accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States.

[49 FR 45404, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 585.4 Petitions for section 19 relief—General—Who may file.

Any person, including, but not limited to, any importer, exporter, shipper, consignee, or owner, operator or charterer of a liner, bulk, or tramp vessel, who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for the relief under the provisions of this part.

§ 585.5 Petitions—How filed.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.6 Petitions—Contents.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures for the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.7 Petitions—Amendment or dismissal of.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.

§ 585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.

Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission will notify the Secretary of State that such conditions apparently exist, and may request he or she seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of his or her efforts at a specified time.

§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.

Upon a submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exists, and may, without further proceeding, issue regulations. Such regulations may effect the following:

(a) Imposition of equalizing fees or charges;

(b) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(c) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(d) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Imposition of a charge, not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(f) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part;

(g) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(h) Any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

[49 FR 45404, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984, as amended at 54 FR 11532, Mar. 21, 1989]

§ 585.10 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the FEDERAL REGISTER and interested persons will then be allowed to participate in this procedure by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.11 Production of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exists, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(a) Statistics for a representative period showing cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it by type, source, value, and directions.

(b) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.12 Production of information—Failure to produce.

The Commission may, when there is a failure to produce any information ordered produced under § 585.11, make appropriate findings of fact or deem such a failure to produce as an admission that conditions unfavorable to shipping in the foreign trade of the United States do exist.

§ 585.13 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone or discontinue any or all such actions if the President informs the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security.

[49 FR 45404, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984]

§ 585.14 Content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the FEDERAL REGISTER. Except where conditions warrant and for good cause, regulations promugated under the rules of this part shall not become effective until 30 days after the date of publication.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

Sec.

586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.
586.2 Conditions unfavorable to shipping in the United States/Peru Trade.
586.3 Conditions unfavorable to shipping in the United States/Ecuador Trade.

AUTHORITY: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

SOURCE: 55 FR 2076, Jan. 22, 1990, unless otherwise noted.

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the FEDERAL REGISTER and added to this part.

§ 586.2 Conditions unfavorable to shipping in the United States/Peru Trade.

(a) *Conditions Unfavorable to Shipping in the Trade.* (1) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(2) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

(b) *Peruvian-flag carriers—assessment of fees.* (1) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV");

Empresa Naviera Santa, S.A. ("Santa");

Naviera Neptuno, S.A. ("Neptuno"); and

Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Peruvian-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Compania Peruana de Vapores (CPV)*

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(B) *Empresa Naviera Santa, S.A.*

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru.

(C) *Naviera Neptuno, S.A.*

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(D) *Naviera Universal, S.A. (Uniline)*

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian-flag carriers operating pursuant to such Agreements.

(d) *Effective Date.* Paragraph (a) of this section is effective on March 28, 1989. The date upon which paragraphs (b) and (c) of this section shall become effective shall be determined by further order of the Commission amending this section.

EFFECTIVE DATE NOTE: At 55 FR 2076, Jan. 22, 1990, part 586 was revised, effective March 8, 1990. However, paragraphs (b) and (c) of § 586.2 were suspended until the Commission publishes an order in the FEDERAL REGISTER establishing their effectiveness.

§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carrier—assessment of fees.* (1) *Voyage,* for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligra, S.A. ("Transligra"), whether on board vessels owned or operated by Transligra or in space chartered by Transligra in vessels owned or operated by others shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligra shall pay to the Federal Maritime Commission a fee in the amount of $50,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligra shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligra in the Trade, whether owned or chartered; the names of vessels on which Transligra has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligra shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligra.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

Sec.
587.1 Purpose; general provisions.
587.2 Factors indicating conditions unduly impairing access.
587.3 Petitions for relief.
587.4 Proceeding.
587.5 Receipt of relevant information.
587.6 Notification to Secretary of State.
587.7 Decision; sanctions; effective date.
587.8 Submission of decision to the President.
587.9 Postponement, discontinuance, or suspension of action.

AUTHORITY: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714, and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 49 FR 45406, Nov. 15, 1984, unless otherwise noted.

NOTE: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

§ 587.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter *U.S. flag vessel*) to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel hereinafter *U.S. flag carrier*) may petition the Federal Maritime Commission for relief under the authority of section 13(b)(5) of the Shipping Act of 1984 (*the Act*) (46 U.S.C. app. 1712(b)(5)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(5) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S. flag carrier resulting from impaired access to cros trades has been demonstrated or is imminent.

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and service of documents and copies of documents (§§ 502.114(b) and 502.118 of this chapter, and except a the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S.

flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably expected to be impaired, or where actual participation in a trade by a U.S. flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

[49 FR 45406, Nov. 15, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 587.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S. flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S. flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S. flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S. flag vessels.

(c) Use of predatory practices, possibly including but not limited to closed conferences employing fighting ships or deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for U.S. flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S. flag vessel to trade between foreign ports.

§ 587.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commerical practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be

caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) Statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 587.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 587.3, when there are indications that conditions unduly imparing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b)(1) Notice of the institution of any such proceeding will be published in the FEDERAL REGISTER, and that notice and petition, if any, will be served on the parties.

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 587.5 of this part. Factual submissions shall be in affidavit form.

(3) An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(c) Following the close of the initial response period, the Commission may issue a decision or order further hearings if warranted. If further hearings are ordered, they will be conducted pursuant to procedures to be outlined by the Commission in its order.

§ 587.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(5) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. All such submissions should be supported by affidavits of fact and memorandum of law. Relevant information may include, but is not limited to:

(1) Statistics, with sources, or, if unavailable, the best estimates pertaining to:

(i) The total cargo carried in the affected liner or bulk trade by type, source, value, tonnage and direction.

(ii) Cargo carried in the affected trade on vessels owned or operated by any person or conference, by type, source, value, tonnage and direction.

(iii) The percentage such cargo carried is of the total affected liner or bulk trade, on a tonnage and value basis.

(iv) The amount of cargo reserved by a foreign government for national-flag or other vessels in the affected trade, on a tonnage and value basis, and a listing of the types of cargo and specific commodities which are reserved for national-flag or other vessels.

(2) Information on the operations of vessels of any party serving the affected trade, including sailings to and from ports in the trade, taxes or other charges paid to foreign authorities,

and subsidies or other payments received from foreign authorities.

(3) Information clarifiying the meaning of the foreign law, rule, regulation or practice complained of, and a description of its implementation.

(4) Complete copies of all conference and other agreements, including amendments and related documents, which apply in the trade.

(b) Once introduced or adduced, information of the character described in paragraph (a) of this section, and petitions and responses thereto, shall be made part of the record for decision and may provide the basis for Commission findings of fact and conclusions of law, and for the imposition of sanctions under the Act and this part.

§ 587.6 Notification to Secretary of State.

When there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission shall so notify the Secretary of State and may request that the Secretary of State seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts within a specified time period.

§ 587.7 Decision; sanctions; effective date.

(a) Upon completion of any proceeding conducted under this part, the Commission will issue and serve a decision on all parties.

(b) If the Commission finds that conditions unduly impairing access of a U.S. flag vessel to ocean trade between foreign ports exist, any of the following actions may be taken:

(1) Imposition of equalizing fees or charges applied in the foreign trade of the United States;

(2) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(3)(i) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports, including the carrier's right to use any or all tariffs of conferences in U.S. trades of which it is a member for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

(ii) Acceptance or handling of cargo for carriage under a tariff that has been suspended, or after a common carrier's right to utilize that tariff has been suspended pursuant to this part, will subject a carrier to the imposition of a civil penalty as provided under the Act (46 U.S.C. app. 1712(b)(3)) of not more than $50,000 per shipment; and

(4) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(5) Imposition of a charge not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part;

(7) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(8) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

(c) If the Commission finds that conditions impairing access of a U.S. flag vessel to ocean trade between foreign ports has not yet occurred, and punitive sanctions are warranted, such sanctions will be imposed to become effective simultaneously with the implementation of the action that would unduly impair the access of a U.S. flag vessel.

(d)(1) All decisions will be published in the FEDERAL REGISTER.

(2) Decisions imposing sanctions, except where conditions warrant and for good cause, will become effective 30 days after the date of publication.

(e) Any party may file a petition to reconsider any decision under this part. Such a petition shall be served on all other parties to the proceeding and shall not, in and of itself, stay the effective date of the Commission action.

[49 FR 45406, Nov. 15, 1984, as amended at 54 FR 11532, Mar. 21, 1989]

§ 587.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the FEDERAL REGISTER pursuant to § 587.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

§ 587.9 Postponement, discontinuance, or suspension of action.

(a) The Commission may, on its own motion or upon a petition, postpone, discontinue, or suspend any action taken by it under the provisions of this part. Such a petition will be served on all other parties and will not, in and of itself, stay the effective date of Commission action.

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in § 587.8.

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

Sec.

588.1 Purpose.
588.2 Definitions.
588.3 Scope.
588.4 Petitions.
588.5 Investigations.
588.6 Information demands and subpoenas.
588.7 Notification to Secretary of State.
588.8 Action against foreign carriers.

AUTHORITY: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

SOURCE: 54 FR 11533, Mar. 21, 1989, unless otherwise noted.

§ 588.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

§ 588.2 Definitions.

For the purposes of this part:

(a) *Common carrier, marine terminal operator, non-vessel-operating common carrier, ocean common carrier, person, shipper, shippers' association,* and *United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(b) *Foreign carrier* means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(c) *Maritime services* means port-to-port carrier of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(e) *United States carrier* means an ocean common carrier which operates vessels documented under the laws of the United States;

(f) *United States oceanborne trade* means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier;

(g) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 588.3 Scope.

The Commission shall take such action under this part as it considers necessary and appropriate when it determines that any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, result in conditions that adversely affect the operations of United States carriers in United States oceanborne trade, and do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) Petitions shall set forth the following:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made, a statement as to whether the party is a foreign government, agency or instrumentality thereof, and a brief statement describing the party's function, business or operation;

(3) The name and address of each United States carrier alleged to be adversely affected, and a description, and if possible, documentation, of why each is considered by petitioner to be a United States carrier;

(4) A precise description and, if applicable, citation of any law, rule, regulation, policy or practice of a foreign government or practice of a foreign carrier or other person causing the conditions complained of;

(5) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(6) Any other evidence of the existence of such laws and practices, evidence of the alleged adverse effects on the operations of United States carriers in United States oceanborne trade, and evidence that foreign carriers of the country involved are not subjected to similar adverse conditions in the United States.

(7) With respect to the harm already caused, or which may reasonably be expected to be caused, the following information, if available to petitioner:

(i) Statistical data documenting present or prospective cargo loss by United States carriers due to foreign government or commercial practices for a representative period, if harm is alleged on that basis, and the sources of the statistical data;

(ii) Statistical data or other information documenting the impact of the foreign government or commercial practices causing the conditions complained of, and the sources of those data; and

(iii) A statement as to why the period used is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues; and

(9) A recommended action, including any of those enumerated in § 588.8, the result of which will, in the view of the petitioner, address the conditions complained of.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 588.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 588.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to § 588.4. An investigation shall be considered to have been initiated for the purpose of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the FEDERAL REGISTER of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

(b) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order. The precise procedures and timetables for participation in investigations initiated under this part will be established on an *ad hoc* basis as appropriate and set forth in the notice. Proceedings may include oral evidentiary hearings, but only when the Commission determines that there are likely to be genuine issues of material fact that cannot be resolved on the basis of written submissions, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. In any event, investigations initiated under this part shall proceed expeditiously, consistent with due process, to conform with the time limits specified in the Foreign Shipping Practices Act and to identify promptly the conditions described in § 588.3 of this part.

(c) Upon initiation of an investigation, interested persons will be given the opportunity to participate in the proceeding pursuant to the procedures set forth in the notice. Submissions filed in response to a notice of investigation may include written data and statistics, views, and legal arguments. Factual information submitted shall be certified under oath. An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. Persons who receive information requests from the Commission pursuant to § 588.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

(d) An investigation shall be completed and a decision rendered within 120 days after it has commenced as defined in paragraph (a) of this section, unless the Commission determines that an additional 90-day period is necessary in order to obtain sufficient information on which to render a decision. When the Commission determines to extend the investigation period for an additional 90 days, it shall issue a notice clearly stating the reasons therefor.

§ 588.6 Information demands and subpoenas.

(a) In furtherance of this part, the Commission may, by order, require any person (including any common carrier, shipper, shipper's association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate, and in the form and within the time prescribed by the Commission. Responses to such orders may be required by the Commission to be made under oath.

(b) The Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence as it deems necessary and appropriate in conducting an investigation under § 588.5 of this part.

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 588.4, or voluntarily submitted by any person pursuant to § 588.5(c), shall not be disclosed to the public. To this end, persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality under this section; however, such information will be advisory only, and the actual determination will be made by the Commission. In the event that a request for confidentiality is not accommodated, the person making the request will be so advised before any disclosure occurs.

§ 588.7 Notification to Secretary of State.

Upon the publication of a petition in the FEDERAL REGISTER, or on its own motion should it determine to initiate an investigation pursuant to § 588.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. The Commission may request the Secretary to report the results of such efforts at a specified time.

§ 588.8 Action against foreign carriers.

(a) Whenever, after notice and opportunity for comment or hearing, the Commassion determines that the conditions specified in § 588.3 of this part exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier which it identifies as a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include, but is not limited to:

(1) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(2) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(3) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(4) Imposition of a charge, not to exceed $1,000,000 per voyage;

(5) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier that is identified by the Commission under this section;

(6) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under this section to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(7) Any other action the Commission finds necessary and appropriate to address adverse foreign shipping practices as described in § 588.3 of this part.

(b) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate U.S. Government agencies prior to taking any action under this action.

(c) Before any action against foreign carriers under this section becomes effective or a request under this section is made, the Commission's determination as to adverse conditions and its proposed actions and/or requests shall be submitted immediately to the President. Such actions will not become effective nor requests made if, within 10 days of receipt of the Commission's determination and proposal, the President disapproves it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

FINDING AIDS

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Redesignation Table

In 1984, primarily as a result of the passage of the Shipping Act of 1984 (46 U.S.C. App. 1701—1720), the CFR parts including the regulations of the Federal Maritime Commission were revised and the numbers redesignated, while new subchapters were created and finalized as follows (with new part numbers):

Subchapter A—General and Administrative Provisions [Parts 500—505] at 49 FR 44362, Nov. 6, 1984.

Subchapter B—Regulations Affecting Ocean Freight Forwarders, Terminal Operations and Passenger Vessels [Parts 510—540] at 49 FR 36296 and 36303, Sept. 14, 1984.

Subchapter C—Regulations Affecting Maritime Carriers and Related Activities in Domestic Offshore Commerce [Parts 550—569] at 49 FR 38836, Oct. 1, 1984.

Subchapter D—Regulations Affecting Maritime Carriers and Related Activities in Foreign Commerce [Parts 572—587] at 49 FR 36856, Sept. 20, 1984 and 49 FR 45320, 45364 and 45397, Nov. 15, 1984. [See new Parts 572 (Agreements), 580, (Tariffs) and 587 (Actions to address conditions unduly impairing access of U.S. flag vessels to ocean trade between foreign ports) for major changes required by the Shipping Act of 1984 in the Commissions's regulation of foreign commerce.]

In 1984, the Federal Maritime Commission also discontinued utilization of the "General Order" system of designating its regulations. For the convenience of the user, the following table shows the relationship of the old CFR part (and where appropriate, section) numbers (and obsolete General Order [G.O.] numbers) to the new CFR part (and section) numbers:

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530.10	568.7
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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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502.183 Revised	33223
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